Docket for 02-1060

No. 02-1060 Status: ARGUED
Title: Illinois, Petitioner
v.
Robert S. Lidster
Docketed: January 14, 2003
Lower Ct: Supreme Court of Illinois
Case Nos.: (91522)
Decision Date: October 18, 2002

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~~
Jan 9 2003	Petition for writ of certiorari filed. (Response due February 13, 2003)
Feb 11 2003	Waiver of right of respondent Robert S. Lidster to respond filed.
Feb 13 2003	Brief amicus curiae of Ohio, et al. filed.
Mar 3 2003	Response Requested . (Due April 2, 2003)
Mar 31 2003	Motion for leave to proceed in forma pauperis filed by respondent Robert S. Lidster.
Mar 31 2003	Response to petition from respondent Robert S. Lidster filed.
Apr 14 2003	Reply of petitioner Illinois filed.
Apr 28 2003	Form 4 affidavit received from counsel for respondent and distributed.
May 5 2003	Motion for leave to proceed in forma pauperis filed by respondent GRANTED.
May 5 2003	Petition GRANTED.
May 14 2003	Extension of time within which to file the joint appendix and petitioner's brief on the merits to and including July 3, 2003.
Jul 2 2003	Brief amicus curiae of Criminal Justice Legal Foundation filed.
Jul 3 2003	Brief amicus curiae of United States filed.
Jul 3 2003	Joint appendix filed.
Jul 3 2003	Brief of petitioner Illinois filed.
Jul 3 2003	Brief amici curiae of Illinois Association of Chiefs of Police, et al. filed.
Jul 3 2003	Brief amici curiae of Ohio, et al. filed.
Jul 21 2003	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Aug 1 2003	Brief of respondent Robert S. Lidster filed.
Aug 7 2003	Brief amicus curiae of National College for DUI Defense filed.
Aug 7 2003	Brief amici curiae of National Association of Criminal Defense Lawyers, et al. filed.
Aug 19 2003	CIRCULATED.
Aug 19 2003	SET FOR ARGUMENT Wednesday November 5, 2003.
Aug 25 2003	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
Aug 27 2003	Application (03A173) to extend the time to file a reply brief from September 3, 2003 to September 17, 2003, submitted to Justice Stevens.
Aug 27 2003	Application (03A173) granted by Justice Stevens extending the time to file until September 17, 2003.
Sep 4 2003	Record received from the Supreme Court of Illinois. (1 Box)
Sep 17 2003	Reply of petitioner Illinois filed. (Distributed)

Docket for 02-1060

Nov 5 2003	Argued. For Petitioner: Gary Feinerman, Solicitor General of Illinois; and on behalf of the United States, as amicus curiae, Patricia A. Millett, Assistant to the Solicitor General, Department of Justice, Washington, DC. For Respondent: Donald J. Ramsell.

FILED

(1) 021060 JAN - 9 2003

OFFICE OF THE CLERK

No.

In the
Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

ROBERT S. LIDSTER,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

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Printed by Authority of the State of Illinois (P.O. 30254—55—12-20-02)

45 pp

QUESTION PRESENTED FOR REVIEW

Whether *Indianapolis v. Edmond*, 531 U.S. 32 (2000), prohibits police officers from conducting a checkpoint organized to investigate a prior offense, at which checkpoint law enforcement officers briefly stopped all oncoming motorists to hand out flyers about—and look for witnesses to—the offense, where the checkpoint was conducted exactly one week after—and at approximately the same time of day as—the offense, and where the checkpoint otherwise met the reasonableness standard articulated in *Brown v. Texas*, 443 U.S. 47 (1979).

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PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of Illinois, respectfully requests that this Court issue a writ of *certiorari* to the Supreme Court of Illinois to review that court's judgment and opinion entered on October 18, 2002.

OPINIONS BELOW

The Supreme Court of Illinois, on October 18, 2002, issued its opinion in this case, *People v. Lidster*, ___ Ill.2d ___, 2002 WL 31341339 (2002). This decision is reprinted in the appendix to this petition. The March 30, 2001, order of the Illinois Appellate Court is also reprinted in the appendix to this petition. *People v. Lidster*, 319 Ill.App.3d 825, 747 N.E.2d 419 (2nd Dist. 2001).

JURISDICTION

The Supreme Court of Illinois entered its opinion on October 18, 2002. The Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257 (a), since, in the proceedings in the state courts of Illinois, Respondent asserted an alleged violation of his rights arising under the United States Constitution.

STATEMENT OF THE CASE

On August 30, 1997, the Lombard, Illinois police department set up a checkpoint directed at solving a fatal hit-and-run accident which occurred exactly one week earlier at the same location and at approximately the same time of day. The time and place of the checkpoint were narrowly tailored in an attempt to find someone leaving a regular shift at work near the scene of the hit-and-run who may have seen something valuable to the investigation of that offense.

After initially being stopped at the checkpoint, Respondent almost hit a checkpoint officer with his car—and after exhibiting other signs of impaired driving—Respondent was arrested and charged with driving under the influence of alcohol. Arguing that he was seized without individualized suspicion, in violation of the Fourth Amendment to the United States Constitution, Respondent moved to quash his arrest and suppress the evidence of his offense. At the hearing on Respondent's motion to quash and suppress, Detective Ray Vasil testified that the checkpoint was organized by Lieutenant Glennon, third in command at the Lombard police department, and that its primary purpose was to distribute flyers to the stopped motorists, alerting them to the hit-and-run and to the need to come forward with any relevant information. The checkpoint was operated in a non-discretionary manner; the duration of the stop was short; and there was no crime-detection purpose sought to be achieved by the checkpoint. All east-bound motorists were stopped on average from 10 to 15 seconds and were not asked for their names, their drivers' licenses, or their insurance information; they were not even checked for seat belt violations. Although the checkpoint itself may not have been publicized, the fatal hit-and-run, which was the basis for the checkpoint, had been well publicized. Additionally, the checkpoint was operated in an apparently official nature, i.e., there were between a half dozen and a dozen police and emergency vehicles with oscillating lights

at the checkpoint, and Detective Vasil wore an orange reflective police vest and held an orange traffic cone.

After his motion was denied and after his subsequent bench trial, Respondent was found guilty of driving under the influence of alcohol and sentenced to one year of conditional discharge. He was also ordered to complete counseling, complete 14 days in the Sheriff's Work Alternative Program, and pay a $200.00 fine.

The Appellate Court of Illinois, Second District, in reversing Respondent's conviction, found that the instant case did not comply with the constitutional standards set forth in *Indianapolis v. Edmond*, 531 U.S. 32 (2000). *People v. Lidster*, 319 Ill.App.3d 825, 747 N.E.2d 419 (2nd Dist. 2001) (App. at 28).[1]

On October 18, 2002, the Supreme Court of Illinois affirmed the appellate court's judgment, reasoning that the primary purpose of the instant checkpoint was to seek evidence of ordinary criminal wrongdoing, and that such a purpose would not be sufficient to suspend the usual requirement of individualized suspicion, under *Edmond*. *People v. Lidster*, ___ Ill.2d ___, 2002 WL 31341339 (2002) (App. at 10).

Petitioner, the State of Illinois, now seeks a writ of *certiorari* from this Court to review the judgment and opinion of the Supreme Court of Illinois.

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[1] "App." refers to the Appendix attached to this petition.

REASON FOR GRANTING THE WRIT

Certiorari Should Be Granted Because The Illinois Supreme Court Misconstrued *Indianapolis v. Edmond*, 531 U.S. 32 (2000), As Creating A *Per Se* Rule That Checkpoints For Informational Purposes—To Gather Information About A Known Crime—Are Unconstitutional, Thereby Precluding Consideration In Those Cases Of The Balancing Test Of *Brown v. Texas*, 443 U.S. 47 (1979), Normally Applied In Checkpoint Cases.

The Supreme Court of Illinois misconstrued this Court's holding in *Indianapolis v. Edmond*, 531 U.S. 32 (2000), to create a *per se* rule that checkpoints organized to obtain information about a specific, known crime are constitutionally impermissible. In so doing, the court improperly dispensed with the balancing test of *Brown v. Texas*, 443 U.S. 47 (1979), normally applied to determine the reasonableness of checkpoints. Not only did the Supreme Court of Illinois decide an important federal question in a way that conflicts with this Court's jurisprudence, its misconstruction necessarily divests law enforcement officers of their timeless and critical functions of gathering information and evidence relating to particular crimes known to them.

Checkpoint stops are "seizures," implicating the Fourth Amendment's requirement of reasonableness. *Edmond*, 531 U.S. at 37, 40; *United States v. Martinez-Fuerte*, 428 U.S. 543, 556 (1976); *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 450 (1990). Although a seizure is ordinarily unreasonable in the absence of individualized suspicion, "the Fourth Amendment imposes no irreducible requirement of such suspicion," and a reasonable seizure can, in appropriate circumstances, exist without it. *Martinez-Fuerte*, 428 U.S. at 561. Indeed, this Court, in *Edmond*, identified certain circumstances in which checkpoint seizures would be reasonable in the absence of individualized suspicion, e.g., checkpoints designed to intercept illegal

aliens (*See Edmond*, 531 U.S. at 37, *citing United States v. Martinez-Fuerte*, 428 U.S. 543) and to remove drunk drivers from the road. *See Edmond*, 531 U.S. at 37, *citing Michigan Department of State Police v. Sitz*, 496 U.S. 444. *Edmond* also countenanced the suggestion, in *Delaware v. Prouse*, 440 U.S. 648 (1979), that a roadblock to check for licensure would be constitutional. *Edmond*, 531 U.S. at 38. *Edmond* did, however, declare unconstitutional checkpoints whose primary purpose was the "ordinary enterprise of investigating crimes" or, said another way, the "general interest in crime control." *Edmond*, 531 U.S. at 41-44.

A. The Instant Informational Checkpoint Does Not Fall Within *Edmond*'s Proscription.

In *Edmond*, this Court considered the constitutionality of a checkpoint program whose primary purpose was the discovery and interdiction of illegal narcotics. *Indianapolis v. Edmond*, 531 U.S. 32 (2000). At these roadblocks, an officer asked the driver for a license and registration, looked for signs of impairment in the driver, and conducted an open-view examination of the vehicle—all while a narcotics-detection dog walked around the outside of each stopped vehicle. *Edmond*, 531 U.S. at 35. On average, each stop that did not give rise to further inquiry lasted up to five minutes. *Id.*

In contrast, at the 10- to 15-second stops involved in the instant checkpoint, the drivers were not asked for their names, their drivers' licenses, their insurance information, and they were not even checked for seatbelt violations. (R. 170).[2] The officers simply handed out flyers about the fatal

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[2] "(R.___)" designates the record transcript from the state court proceedings in *People v. Lidster*, Case No. 97 DT 3462, before the

(continued...)

hit-and-run and asked the stopped motorists whether they were in the area the previous week and whether they saw anything. (R. 159-160, 163). The checkpoint's primary (and, in fact, only) purpose was to seek information about an existing crime, not to attempt to make new defendants of those stopped at the checkpoint. Thus, the nature, purpose, and scope of the instant checkpoint were completely different than those involved in *Edmond*.

Furthermore, *Edmond* itself offered a clear distinction between the checkpoints in that case and others, such as the one involved in the instant case. *Edmond*, noting that this Court has "never approved a checkpoint program whose primary purpose was to *detect* evidence of ordinary criminal wrongdoing," held unconstitutional the Indianapolis checkpoints because their primary purpose was "to *uncover* evidence of ordinary criminal wrongdoing." *Edmond*, 531 U.S. at 41-42. (Emphasis added). Petitioner initially asserts that this Court's chosen words of "detect" and "uncover" signify the activity of discovering unknown crimes, rather than seeking information on a particular crime known to the police.

Additionally, in explaining its holding, this Court stated:

> We decline to suspend the usual requirement of individualized suspicion where police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. *We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime.*

Edmond, 531 U.S. at 44. (Emphasis added).

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[2] (...continued)
Circuit Court of DuPage County for the Eighteenth Judicial Circuit of Illinois.

In finding the instant checkpoint unconstitutional—and consequently all informational checkpoints unconstitutional—the Illinois Supreme Court erroneously focused on the first sentence quoted above to the exclusion of the second (italicized) sentence which, modifying the first, plainly proscribes checkpoints for the purpose of exposing to the police unknown crimes committed by the seized motorists themselves.

As noted above, in discussing prior constitutional checkpoints, this Court, in *Edmond*, countenanced the suggestion in *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed. 2d 660 (1979), that a roadblock organized to check licensure would be lawful. *Edmond*, 531 U.S. at 39. In so doing, the *Edmond* Court noted that it considered the "purposes of such a hypothetical roadblock to be distinct from a general purpose of investigating crime." *Id.*

Further, the Supreme Court of Illinois misinterpreted the concern voiced by this Court in *Edmond*, specifically that:

> [w]ithout drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life.

Edmond, 531 U.S. at 42. Warning against the threat perceived to have been articulated in *Edmond*, the Supreme Court of Illinois provided a host of crime statistics in the State to demonstrate the ease and frequency with which checkpoints could be formed. *People v. Lidster*, ___ Ill.2d ___, 2002 WL 31341339 (2002) (App. at 8). The problem with the court's analysis is that *Edmond* was not troubled by the threat of ubiquitous checkpoints alone—but, rather, by the threat of ubiquitous checkpoints directed primarily at crime control. Current law already allows for the possibility of ubiquitous checkpoints to detect impaired drivers or to check drivers' licenses and registrations—police de-

partments need not even wait until a crime is committed before organizing such checkpoints. Furthermore, the court's slippery slope argument is defused by the fact that the number of checkpoints assembled would necessarily be lessened by the limited amount of resources and manpower available to enforcement authorities; and once it is determined that a given checkpoint would be a good use of such resources and manpower, it still would have to meet the reasonableness test outlined by this court in *Brown v. Texas*, 443 U.S. 47 (1979).

As further evidence that the Illinois Supreme Court's *per se* rule against informational checkpoints was not intended by *Edmond*, this Court, in *Edmond*, stated that it does not "limit the purposes that may justify a checkpoint program to any rigid set of categories," (*Edmond*, 531 U.S. at 44), "nor does our opinion speak to other intrusions aimed primarily at purposes beyond the general interest in crime control." *Edmond*, 531 U.S. at 48. As the primary purpose of the instant checkpoint was to obtain information about a known crime (rather than to conduct a witch-hunt or dragnet search for unknown crimes) it did not involve "the general interest in crime control," as contemplated under *Edmond*.

In the only other case to address the constitutionality of a crime-specific informational checkpoint in the aftermath of *Edmond*, *Burns v. Commonwealth*, 261 Va. 307, 541 S.E. 2d 872 (2001), the Virginia Supreme Court agreed that *Edmond* does not compel a *per se* rule precluding such informational checkpoints. In *Burns*, much like in the instant case, the Shenandoah County Sheriff's Department decided to set up a roadblock because a brutal homicide had been recently committed in the area of the roadblock, and law enforcement officials did not know the identity of the perpetrator or whether the perpetrator was still in the area. *Burns*, 261 Va. at 322. "[T]he purpose of the roadblock

was to 'canvas drivers who were passing through the area, to see whether they had seen anything or heard anything' during the time period when the crime had probably been committed the previous day." *Id.* The checkpoint was set up the day after the murder, during the hours of 7:00 p.m. and 11:30 a.m., the time during which the murder was believed to have occurred. *Id.* As in the instant case, all vehicles were stopped and the motorists were asked " 'if they were through that section during those times, and if they were, [whether they saw] anything of a suspicious nature in or around [the victim's house].' " *Burns*, 261 Va. at 323.

The *Burns* court, in finding the checkpoint constitutional, specifically stated:

> The primary purpose of the roadblock that Sheriff Green established obviously was not related to policing the borders or ensuring road safety. Nor was its purpose simply to investigate ordinary criminal wrongdoing as was the checkpoint in *Edmond*. Instead, the roadblock in this case was specifically designed to investigate a particular murder that had recently occurred in the area where the roadblock was placed. When Sheriff Green decided to set up the roadblock, the perpetrator's identity and whereabouts remained unknown. Law enforcement officers were not stopping vehicles merely to discover evidence of crimes in general. Thus, we conclude that the roadblock in this case falls within the exigent circumstances recognized by the Supreme Court in *Edmond* and that it, therefore, did not contravene the Fourth Amendment.

Burns, 261 Va. at 323-24. Indeed, just as the *Burns* checkpoint falls outside of the category of discovering evidence of crimes in general, so too does the instant checkpoint. The Lombard police officers were not stopping vehicles to merely discover evidence of crimes in general, as were the officers in *Edmond*. Additionally, the instant checkpoint—

created to solve a fatal hit-and-run—involved a connection to highway safety that is even absent in *Burns*, as the hit-and-run driver remained at large and a possible threat to others in the area. That connection only removes the instant checkpoint farther from the category of checkpoints *Edmond* intended to proscribe.

B. The Reasonableness Of The Instant Informational Checkpoint Should Have Been Evaluated Under The Standard Set In *Brown v. Texas*, 443 U.S. 47 (1979), With Which It Would Have Complied.

As noted, a vehicle stop at a checkpoint effectuates a seizure under the Fourth Amendment. *Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000). However, checkpoint stops without individualized suspicion do not automatically violate the Fourth Amendment. The Fourth Amendment only proscribes those seizures that are unreasonable. *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 450 (1990). As a result, the constitutionality of a checkpoint necessarily depends on its reasonableness.

This Court's jurisprudence for determining a checkpoint's reasonableness involves balancing: (1) the State's interest served by the checkpoint; (2) the degree of intrusion (both objective and subjective) upon individual motorists who are stopped; and (3) the extent to which the checkpoint could reasonably be said to advance the State's interest. *Brown v. Texas*, 443 U.S. 47, 50-51 (1979); *Sitz*, 496 U.S. at 455. By misconstruing *Edmond* to create a *per se* rule that informational checkpoints are unconstitutional, the Illinois Supreme Court improperly precluded consideration, in the instant case, of the standard test, derived from *Brown*, to determine the reasonableness of checkpoints. The court's ruling further precludes consideration of the *Brown* reasonableness test for all subsequent informational checkpoints, as it has found them to be *per se* unconstitutional.

People v. Lidster, ___ Ill.2d ___, 2002 WL 31341339 (2002) (App. at 10).

In *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990), this Court relied on *Brown* to find sobriety checkpoints constitutional. *Sitz*, 496 U.S. at 455. In so doing, the Court rejected the respondent's argument that the *Brown* balancing test "was not the proper method of analysis" (*Sitz*, 496 U.S. at 449), and that "there must be a showing of some special governmental need 'beyond the normal need' for criminal law enforcement before a balancing analysis is appropriate. . . ." *Sitz*, 496 U.S. at 450. As a result, the Supreme Court of Illinois should not have disregarded the balancing test developed by this Court in determining the reasonableness of the instant checkpoint and other such informational checkpoints.

Had the instant checkpoint been subjected to a *Brown* balancing analysis, it would have complied with constitutional standards. Certainly, a significant public interest existed in solving a fatal hit-and-run of a bicyclist, where the perpetrator was still at large, and where available information had been insufficient to solve the crime prior to that time. *See Burns v. Commonwealth*, 261 Va. 307, 322, 541 S.E.2d 872 (2001) ("the fact that a murder had occurred was a matter of grave public concern, and the roadblock advanced that concern by aiding in the investigation of the crime").

Further, the objective and subjective intrusion of the instant checkpoint were minimal. Each car was stopped for approximately 10 to 15 seconds (R. 170) while an officer handed out a flyer (R. 161) and asked the driver whether he was in the area at the time of the accident. (R. 163). The drivers were not asked for their names, drivers' licenses, or insurance information. (R. 170). Nor were they inspected for signs of impairment or their vehicles searched. They were not even checked for seat belt violations. (R. 170). As

a result, the objective intrusion of the checkpoint was slight. *See United States v. Martinez-Fuerte*, 428 U.S. 543, 558 (1976). The subjective intrusion upon each motorist was also minimal inasmuch as being stopped at a checkpoint usually generates appreciably less fear in a lawful traveler than being stopped by a roving patrol. *Martinez-Fuerte*, 428 U.S. at 559. Furthermore, at the instant checkpoint, any fear would have been minimized by the apparently official, non-discretionary, and safe operation of the checkpoint, shown by the presence of as many as a dozen police and emergency vehicles (R. 173), the wearing of orange police vests (R. 173), and the stopping of every eastbound vehicle. (R. 162).

Finally, the instant checkpoint was an effective means of advancing the State's interest. Common sense dictates that setting up a checkpoint exactly one week after the crime, at approximately the same time of day—in order to stop motorists who regularly travel that route at the end of their work shifts—will increase the likelihood of finding witnesses to the crime. Moreover, the checkpoint was narrowly tailored to accomplish that objective.

In sum, the Illinois Supreme Court's misconstruction of *Edmond* to create a *per se* rule that crime-specific informational checkpoints are unconstitutional—and its attendant disregard of the *Brown* balancing test—improperly prevents law enforcement officers from performing their historic, normal and necessary functions of trying to find witnesses to a known crime.

CONCLUSION

For the aforementioned reasons, Petitioner, the State of Illinois, respectfully requests that this Honorable Court grant *Certiorari* and reverse the decision of the Illinois Supreme Court.

Respectfully submitted,

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APPENDIX

[Filed October 18, 2002]

Docket No. 91522–Agenda 12–January 2002.

THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. ROBERT S. LIDSTER, Appellee.

JUSTICE FREEMAN delivered the opinion of the court:

Following a bench trial, the circuit court of Du Page County convicted defendant of driving under the influence of alcohol (625 ILCS 5/11–501(a)(2) (West 1996)). The appellate court found that the roadblock where the police arrested defendant did not comply with the constitutional standards set forth in *City of Indianapolis v. Edmond*, 531 U.S. 32, 148 L. Ed. 2d 333, 121 S. Ct. 447 (2000). Accordingly, the appellate court reversed defendant's conviction. 319 Ill. App. 3d 825. We granted the State's petition for leave to appeal (177 Ill.2d R. 315(a)), and allowed the Illinois Association of Chiefs of Police to file an *amicus curiae* brief in support of the State. For the reasons that follow, we affirm the judgment of the appellate court.

BACKGROUND

On August 30, 1997, the Lombard police department set up a roadblock on North Avenue in Lombard, Illinois. A police officer stopped defendant at the roadblock and directed him to a side street where another police officer had defendant perform several field-sobriety tests. Defendant failed a number of the tests and was taken into custody.

Defendant was subsequently charged with the offense of driving under the influence of alcohol. He filed a motion to quash his arrest and suppress evidence. At the hearing on the motion, Detective Ray Vasil testified that Lieutenant Glennon, third in command at the Lombard police department, authorized the roadblock. The purpose of the road-

block was to obtain information from motorists regarding a hit-and-run accident that took place one week earlier, at the same location, and at the same time of day. In particular, the police wanted information regarding a Ford Bronco or full-sized pickup truck implicated in the accident.

The Lombard police department has a general order regarding the use of roadblocks. The order, however, does not contain guidelines regarding the use of roadblocks to obtain information from crime witnesses. The roadblock at issue was not videotaped. Further, the police did not publicize the roadblock.

Between 6 and 12 police vehicles participated in the roadblock. Detective Vasil wore an orange reflective vest with the word "Police" on it, and stood between the eastbound lanes of North Avenue, 15 feet from the roadblock. A line of cars formed at the roadblock. As each vehicle pulled up to Detective Vasil, he handed a flyer to the driver of the vehicle requesting information regarding the accident. Because defendant's Mazda minivan almost hit him, Detective Vasil requested defendant's driver's license and insurance card. Detective Vasil smelled alcohol on defendant's breath and noticed that defendant's speech was slurred. Detective Vasil directed defendant to a side street where Detective Roy Newton had defendant perform several sobriety tests.

The trial court denied defendant's motion.

At defendant's subsequent bench trial, Detective Newton testified that he was assigned to the corner of North Avenue and Craig. His duties were to ensure that drivers did not skirt the roadblock and to provide help to the officers in the event they experienced any problems with the vehicles or drivers stopped at the roadblock. The officers at the roadblock directed several cars, including defendant's vehicle, to Detective Newton's location. At Detective Newton's request, defendant produced a driver's license and insurance information. Detective Newton then had defendant

perform several sobriety tests and placed defendant under arrest.

The court found defendant guilty of driving under the influence of alcohol. The court sentenced defendant to one year of conditional discharge and required that defendant participate in counseling, complete 14 days in the "Sheriff's Work Alternative Program," and pay a fine of $200.

ANALYSIS

As noted above, the appellate court relied on *Edmond*, 531 U.S. 32, 148 L. Ed. 2d 333, 121 S. Ct. 447, in finding the roadblock at issue invalid. In *Edmond*, the United States Supreme Court invalidated checkpoints set up by the police on Indianapolis roads in an effort to interdict unlawful drugs. Initially, the Court observed:

> "The Fourth Amendment requires that searches and seizures be reasonable. A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing. [Citation.] While such suspicion is not an 'irreducible' component of reasonableness [citation], we have recognized only limited circumstances in which the usual rule does not apply. For example, we have upheld certain regimes of suspicionless searches where the program was designed to serve 'special needs, beyond the normal need for law enforcement.' [Citations.]
> * * *
>
> We have also upheld brief, suspicionless seizures of motorists at a fixed Border Patrol checkpoint designed to intercept illegal aliens, *Martinez-Fuerte*, [428 U.S. 543, 49 L. Ed. 2d 1116, 96 S. Ct. 3074 (1976)], and at a sobriety checkpoint aimed at removing drunk drivers from the road, *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444[, 110 L. Ed. 2d 412, 110 S. Ct. 2481]

(1990)." *Edmond*, 531 U.S. at 37, 148 L. Ed. 2d at 340-41, 121 S. Ct. at 451-52.

The *Edmond* Court then reviewed its decisions in *Martinez-Fuerte* and *Sitz*, detailing the need for the checkpoints at issue and the important governmental interests they served. The Court observed:

> "We have never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing. Rather, our checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion. We suggested in *Prouse* that we would not credit the 'general interest in crime control' as justification for a regime of suspicionless stops. [*Delaware v. Prouse*, 440 U.S. 648, 659 n. 18, 59 L. Ed. 2d 660, 671 n. 18, 99 S. Ct. 1391, 1399 n. 18 (1979).] Consistent with this suggestion, each of the checkpoint programs that we have approved was designed primarily to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety." *Edmond*, 531 U.S. at 41, 148 L. Ed. 2d at 343, 121 S. Ct. at 454.

The *Edmond* Court firmly rejected the suggestion that the Indianapolis checkpoints could be upheld pursuant to *Martinez- Fuerte* and *Sitz:*

> "Petitioners propose several ways in which the narcotics-detection purpose of the instant checkpoint program may instead resemble the primary purposes of the checkpoints in *Sitz* and *Martinez-Fuerte*. Petitioners state that the checkpoints in those cases had the same ultimate purpose of arresting those suspected of committing crimes. * * * Securing the border and apprehending drunk drivers are, of course, law enforcement activities, and law enforcement officers employ arrests and criminal prosecutions in pursuit of these

> goals. [Citations.] If we were to rest the case at this high level of generality, there would be little check on the ability of the authorities to construct roadblocks for almost any conceivable law enforcement purpose. Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life." *Edmond*, 531 U.S. at 42, 148 L. Ed. 2d at 343-44, 121 S. Ct. at 454.

The *Edmond* Court concluded that the Indianapolis checkpoints were invalid, stating:

> "The primary purpose of the Indianapolis narcotics checkpoints is in the end to advance 'the general interest in crime control,' [citation]. We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." *Edmond*, 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455.

See also *Ferguson v. City of Charleston*, 532 U.S. 67, 81, 149 L. Ed. 2d 205, 218-19, 121 S. Ct. 1281, 1290 (2001) (in invalidating a program at a state hospital whereby urine samples from pregnant women were tested for drugs and the results communicated to the police, the Court stated: "Respondents argue in essence that their ultimate purpose–namely, protecting the health of both mother and child–is a beneficent one. In *Chandler* [*v. Miller*, 520 U.S. 305, 137 L. Ed. 2d 513, 117 S. Ct. 1295 (1997)], however, we did not simply accept the State's invocation of a 'special need.' Instead, we carried out a 'close review' of the scheme at issue before concluding that the need in question was not

'special,' as that term has been defined in our cases. [Citation.] In this case, a review of the M-7 policy plainly reveals that the purpose actually served by the [hospital] searches 'is ultimately indistinguishable from the general interest in crime control.' *Indianapolis v. Edmond,* 531 U.S. 32, 44 (2000)").

In the present case, the appellate court held the roadblock at issue invalid under *Edmond.* The appellate court noted "that the roadblock's ostensible purpose was to seek evidence of 'ordinary criminal wrongdoing.'" 319 Ill. App. 3d at 828. The court concluded "[t]his is the type of routine investigative work that the police must do every day and does not justify the extraordinary means chosen to further the investigation." 319 Ill. App. 3d at 828.

The State asserts that *Edmond* is distinguishable because the roadblock at issue had a specific purpose of assisting the authorities in solving a crime that had already been committed and was known to the police. Thus, police efforts were not directed at general crime control. Unlike in *Edmond,* the Lombard police department did not seek to interrogate and inspect motorists to ferret out evidence that the motorists themselves had committed crime that was as yet unknown to police. Defendant was only subjected to further investigation because he narrowly missed hitting an officer in the area where vehicles were stopped.

The State's interpretation of *Edmond* is incorrect. First, as the Court reaffirmed in *Edmond,* the general rule is that "a search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing." *Edmond,* 531 U.S. at 37, 148 L. Ed. 2d at 340, 121 S. Ct. at 451. The checkpoints upheld in *Martinez-Fuerte,* 428 U.S. 543, 49 L. Ed. 2d 1116, 96 S. Ct. 3074 (1976) (immigration checkpoints located near the Mexican border), and *Michigan Department of State Police v. Sitz,* 496 U.S. 444, 110 L. Ed. 2d 412, 110 S. Ct. 2481 (1990) (sobriety checkpoint), are "limited exceptions to the general rule." *Edmond,* 531 U.S. at 41, 148 L. Ed. 2d at 343, 121 S. Ct. at 454. Certainly the Lombard roadblock does not fall within the scope of the limited exceptions heretofore approved by the Supreme Court.

Second, the Court in *Edmond* was keenly aware that an exception for roadblocks "designed primarily to serve the general interest in crime control" would abrogate the general rule requiring individualized suspicion of wrongdoing. See 4 W. LaFave, Search & Seizure § 9.6 (3d ed. Supp. 2002). Accordingly, the Court drew a bright line that when the primary purpose of a roadblock is general crime control, the roadblock is unconstitutional. The Court explained:

> "Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life." *Edmond,* 531 U.S. at 42, 148 L. Ed. 2d at 344, 121 S. Ct. at 454.

The Court declined "to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes." *Edmond,* 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455.

In the case at bar, the State ignores the concerns expressed by the Court in *Edmond.* In spite of the clear admonishment in *Edmond* against the use of roadblocks to advance "the general interest in crime control," the State requests that we allow a roadblock for precisely that purpose.

Third, the State finds a distinction between gathering information leading to the arrest and prosecution of a motorist as the perpetrator of a crime, and gathering information from a motorist leading to the identification of *another* motorist as the perpetrator of a crime. According to

the State, gathering information leading to the arrest and prosecution of a motorist as the perpetrator of a crime is a part of general crime control. However, the State maintains that gathering information from a motorist leading to the identification of *another* motorist as the perpetrator of a crime is *not* considered a part of general crime control. Taking the State's reasoning a step further, a police investigation tool such as canvassing a neighborhood to find identification witnesses to a crime is not considered to be a part of general crime control. In the State's view, crime control involves arresting the perpetrator directly; it does not involve gathering information leading to the arrest of the perpetrator. We must reject this contention. In investigating and solving any crime, police efforts are directed at general crime control. This holds true whether the police happen upon the perpetrator of the crime at the roadblock or obtain information from a roadblock detainee identifying the perpetrator of the crime.

Lastly, an exception for informational roadblocks has the potential to make roadblocks "a routine part of American life." *Edmond,* 531 U.S. at 42, 148 L. Ed. 2d at 344, 121 S. Ct. at 454. In 2000, 870 murders, 49,652 assaults, 25,168 robberies, 77,947 burglaries, 306,805 thefts, 55,222 motor vehicle thefts, and 2,899 arsons were known by police to have been committed in Illinois. J. Fitch, 2001 Illinois Statistical Abstract 764 (16th ed. 2001). Of those, 706 murders, 31,655 assaults, 21,691 robberies, 41,464 burglaries, 168,890 thefts, 45,083 motor vehicle thefts, and 1,525 arsons were known by police to have been committed in Cook County. J. Fitch, 2001 Illinois Statistical Abstract 764 (16th ed. 2001). In the City of Chicago, there were 627 murders, 26,660 assaults, 19,449 robberies, 28,401 burglaries, 105,728 thefts, 35,570 motor vehicle thefts and 1,106 arsons. J. Fitch, 2001 Illinois Statistical Abstract 766 (16th ed. 2001). Should the police have been allowed to set up roadblocks to obtain information from potential witnesses

for each murder? What of a robbery, an aggravated criminal sexual assault, an arson or any other serious crime? According to the State, for a period of at least a week after each crime, police could set up roadblocks with the specific purpose of making inquiries of persons who were possibly witnesses to a crime. The troubling specter then arises that the streets of Cook County, or at least the streets of Chicago, would be adorned with roadblocks, an outcome clearly unacceptable under *Edmond.*

Amicus suggests that exigent circumstances justified the use of the roadblock. *Amicus* asserts that police needed to act quickly to contact possible witnesses or else risk losing vital information. The Court in *Edmond* left open the possibility that an emergency may justify a law enforcement roadblock. The Court explained:

> "Of course, there are circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control. For example, as the Court of Appeals noted, the Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route. [Citation.] The exigencies created by these scenarios are far removed from the circumstances under which authorities might simply stop cars as a matter of course to see if there just happens to be a felon leaving the jurisdiction. While we do not limit the purposes that may justify a checkpoint program to any rigid set of categories, we decline to approve a program whose primary purpose is ultimately indistinguishable from the general interest in crime control." *Edmond,* 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455.

In the present case, the hit-and-run accident happened a week before the roadblock. There was no indication that the

motorist involved posed any further danger to local residents or, indeed, that the motorist remained in the vicinity. There was also no indication that the motorist was driving recklessly or was driving under the influence of alcohol. While this court understands the efforts of the Lombard police department to obtain information leading to the identification of the motorist, the limited, exigent circumstances of the nature identified by the Supreme Court in *Edmond* are not present in the matter at bar. Absent such exigent circumstances, the fourth amendment's prohibition against suspicionless seizures should not give way to the normal needs of law enforcement, be they identified as crime control, criminal investigation or canvassing efforts to obtain information leading to the identification and apprehension of the perpetrator of a crime.

The State and *amicus* fail in their attempts to distinguish *Edmond*. *Edmond* clarifies that "[w]hen law enforcement authorities pursue primarily general crime control purposes at checkpoints such as here, * * * stops can only be justified by some quantum of individualized suspicion." *Edmond*, 531 U.S. at 47, 148 L. Ed. 2d at 347, 121 S. Ct. at 457.

CONCLUSION

The laws of this state require that a motorist remain at the scene of an accident. In the present case, the motorist left the scene of the accident. The police set up a roadblock to obtain information regarding the identity of the motorist. The goals of the police in doing so are laudable.

This court is sympathetic to the efforts of the police in identifying the motorist involved in the accident. Sympathy, however, does not justify the roadblock at issue. As the Supreme Court observed in *Almeida-Sanchez v. United States*, 413 U.S. 266, 37 L. Ed. 2d 596, 93 S. Ct. 2535 (1973):

"The needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards. It is well to recall the words of Mr. Justice Jackson, soon after his return from the Nuremberg Trials:

> 'These [fourth amendment rights], I protest, are not mere second-class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government.' *Brinegar v. United States*, 338 U.S. 160, 180, 93 L. Ed. 1879, 69 S. Ct. 1302 (Jackson, J., dissenting)." *Almeida-Sanchez*, 413 U.S. at 273-74, 37 L. Ed. 2d at 603, 93 S. Ct. at 2540.

The right of an individual to be free from unreasonable searches and seizures is an indispensable freedom, not a mere luxury. It cannot give way in the face of a temporary need for the police to obtain information regarding the identity of the motorist at issue. As the protector of the constitutional rights of all citizens of this state, this court is commanded to draw a "line at roadblocks designed primarily to serve the general interest in crime control." *Edmond*, 531 U.S. at 42, 148 L. Ed. 2d at 344, 121 S. Ct. at 454. Without such a line, the fourth amendment will do little to prevent intrusive searches and seizures from becoming a routine part of American life. *Edmond*, 531 U.S. at 42, 148 L. Ed. 2d at 344, 121 S. Ct. at 454.

The judgment of the appellate court is affirmed.

Affirmed.

JUSTICE THOMAS, dissenting:

The majority has misconstrued *City of Indianapolis v. Edmond,* 531 U.S. 32, 148 L. Ed. 2d 333, 121 S. Ct. 447 (2000), by reading it to prohibit the type of roadblock at issue here. *Edmond* is factually distinguishable, and its language does not condemn the strictly informational roadblock instituted by the Lombard police department in this case. Additionally, I believe that the majority erroneously creates a *per se* rule that roadblocks involving police canvassing for information about a specific, known crime are constitutionally impermissible. Consequently, the majority abrogates the balancing test of *Brown v. Texas,* 443 U.S. 47, 61 L. Ed. 2d 357, 99 S. Ct. 2637 (1979), which is normally applied in roadblock cases. For all of these reasons and as more fully explained below, I respectfully dissent.

I. *Edmond* Is Distinguishable and Is Not Determinative

In *Edmond,* the Court considered the constitutionality of an Indianapolis checkpoint program that had as its primary purpose the interdiction of illegal drugs. In contrast to the 10 to 15 second stops in the present case, which were conducted for the sole purpose of handing out an informational flyer, the total duration of the stops in *Edmond* lasted between two and five minutes. Moreover, unlike the roadblock here, drivers in *Edmond* were asked to produce a license and registration while an officer looked for signs of impairment. The officer also conducted an open-view examination of the vehicle from the outside. Meanwhile, a narcotics-detection dog was walked around the outside of the stopped vehicle. Thus, the nature, purpose, and scope of the roadblocks were completely different in the two cases.

In the course of discussing its prior roadblock seizure cases, the *Edmond* Court declared that it had never ap-

proved "a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing." *Edmond,* 531 U.S. at 38, 148 L. Ed. 2d at 341, 121 S. Ct. at 452. The Court noted that in *United States v. Martinez-Fuerte,* 428 U.S. 543, 49 L. Ed. 2d 1116, 96 S. Ct. 3074 (1976), it upheld a highway checkpoint established for the purposes of intercepting illegal aliens because of the significant interest in policing the nations borders (*Edmond,* 531 U.S. at 38, 121 S. Ct. at 452, 148 L. Ed. 2d at 341), and in *Michigan Department of State Police v. Sitz,* 496 U.S. 444, 110 L. Ed. 2d 412, 110 S. Ct. 2481 (1990), it upheld a police roadblock instituted to detect intoxicated drivers because of the gravity of the drunken driving problem and the obvious connection between highway safety and the law enforcement practice at issue (*Edmond,* 531 U.S. at 39, 148 L. Ed. 2d at 342, 121 S. Ct. at 453). The Court also discussed *Delaware v. Prouse,* 440 U.S. 648, 59 L. Ed. 2d 660, 99 S. Ct. 1391 (1979), which invalidated a discretionary, suspicionless stop of a single motorist to check his license and registration, noting that the officer's conduct in that case was unconstitutional primarily because of his exercise of discretion without standards promulgated by the police department. *Edmond,* 531 U.S. at 39, 148 L. Ed. 2d at 342, 121 S. Ct. at 453. The Court noted with approval the suggestion in *Prouse* that the questioning of all oncoming traffic at roadblock-type stops to ensure that only those qualified to operate a vehicle are permitted to do so would be a lawful means of serving the interest in highway safety, but it specifically pointed out that it considered the purpose of such a hypothetical roadblock "to be distinct from a general purpose of investigating crime." *Edmond,* 531 U.S. at 39, 148 L. Ed. 2d at 342, 121 S. Ct. at 453.

In concluding that a checkpoint designed primarily to catch drug offenders and interdict illegal narcotics violates the fourth amendment, the *Edmond* Court stated the following:

> "We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops *justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime.*" (Emphasis added.) *Edmond,* 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455.

In applying *Edmond* to the present case, the majority erroneously seizes upon language in *Edmond* that prohibits roadblocks "designed primarily to serve the general interest in crime control," or stated another way, the "ordinary enterprise of crime control," while ignoring other language in the *Edmond* opinion modifying and explaining what is meant by "ordinary crime control." I believe that the majority improperly relies on the first sentence in the above-quoted passage from *Edmond* and disregards the second sentence, which, modifying the first, plainly proscribes checkpoints for the purpose of exposing unknown crimes to the police. *Edmond* should not be read as categorically enjoining police from stopping all vehicles pursuant to an informational roadblock designed to make reasonable inquiry of persons who were possibly witnesses to a specific crime. Instead, I would find that absent either exigent circumstances or a sufficient relationship to highway safety or border concerns, *Edmond* categorically prohibits only checkpoints whose primary purpose lies in discovering that the subjects of the seizure have committed some crime (*Edmond,* 531 U.S. at 43-44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455). Again, the Court in *Edmond* specifically noted that it could not sanction stops "justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that *any given motorist has committed some crime.*" (Emphasis added.) *Edmond,* 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455.

Here, the roadblock at issue had a specific purpose of assisting the authorities in solving a crime that had already been committed and was known to the police. Thus, police efforts were not directed at general crime control within the meaning of *Edmond.* Unlike in *Edmond,* the Lombard police department did not seek to interrogate and inspect motorists to ferret out evidence that the motorists themselves had committed a crime that was as yet unknown to police. The present defendant was subjected to investigation only because his erratic driving nearly resulted in his collision with an officer in the area where vehicles were stopped for purposes of handing out flyers. Once the officers witnessed defendant's erratic driving, they clearly had reasonable suspicion to detain defendant for further inquiry. See *People v. Sorenson,* 196 Ill. 2d 425, 433 (2001); *People v. Brodack,* 296 Ill. App. 3d 71, 74 (1998). As the Court in *Edmond* recognized, its holding was not meant to "impair the ability of police officers to act appropriately upon information that they properly learn during a checkpoint stop justified by a lawful primary purpose, even where such action may result in the arrest of a motorist for an offense unrelated to that purpose." *Edmond,* 531 U.S. at 48, 148 L. Ed. 2d at 347, 121 S. Ct. at 457.

While *Edmond* stated that "[a] search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing" (*Edmond,* 531 U.S. at 37, 148 L. Ed. 2d at 340, 121 S. Ct. at 451), it did not create a *per se* rule announcing that henceforward only roadblocks involving DUI checkpoints or border control would ever be considered constitutional. Instead, *Edmond* discussed with approval the rationale of *Prouse,* which involved a license check. The Court noted that the spot check in that case was invalid because of a lack of standards to guide the discretion of the patrolling officer. *Edmond,* 531 U.S. at 39, 148 L. Ed. 2d at 342, 121 S. Ct. at 453. As previously noted, the *Edmond* Court approved of the assertion in *Prouse* that the

questioning of all oncoming traffic at roadblock-type stops to ensure that only those qualified to operate a vehicle are permitted to do so would be a lawful means of serving the interest of highway safety, and that it considered the purpose of such a hypothetical roadblock "to be distinct from a general purpose of investigating crime." *Edmond*, 531 U.S. at 39, 148 L. Ed. 2d at 342, 121 S. Ct. at 453.

Aside from the fact that the roadblock in this case was distinct from general crime control because it was not designed to detect through "interrogation and inspection * * * that any given motorist has committed some crime" (*Edmond*, 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455), the purpose of the present roadblock is also distinct from general crime control because of its connection to highway safety just as the hypothetical roadblock in *Prouse* was distinct from general crime control. The canvassing for information about a deadly hit-and-run crime that happened on the roadway would serve the purpose of highway safety in a similar fashion to checking licenses to ensure that only qualified drivers are operating motor vehicles.

The conclusion that *Edmond* does not compel the result reached by the majority here is supported by the recent decision of the Supreme Court of Virginia in *Burns v. Commonwealth*, 261 Va. 307, 541 S.E.2d 872 (2001), which is the only other reported case decided in the aftermath of *Edmond* to assess the validity of a roadblock established with the hope of discovering witnesses to a specific, known crime, as opposed to a roadblock established to discover evidence of crime in general. There, police set up a roadblock at a particular location on September 21-22, 1998, between the hours of 7 p.m. and 11:30 a.m. in the hopes of discovering witnesses to a brutal murder that occurred in a nearby house between the same hours on September 20-21, 1998. According to the sheriff who decided to establish the roadblock, its purpose was to "'canvas drivers who

were passing through the area, to see whether they had seen or heard anything' during the time period when the crime had probably been committed the previous day." *Burns*, 261 Va. at 322, 541 S.E.2d at 883. The sheriff also directed officers to stop all vehicles and to ask the operators if they had been through that section during the time in question and, if they had, whether they had seen anything of a suspicious nature in and around the victim's house. Fortuitously, the defendant, who was a relative of the victim, was stopped and eventually made statements implicating himself in the crime.

In holding that the roadblock did not violate the fourth amendment, the Supreme Court of Virginia first considered and weighed the factors enunciated in *Brown*. *Burns*, 261 Va. at 322, 541 S.E.2d at 883. The court concluded that the murder was a matter of grave public concern and that the roadblock advanced that concern by aiding in the investigation of the crime. *Burns*, 261 Va. at 322, 541 S.E.2d at 883. Furthermore, the court emphasized that the roadblock was carried out pursuant to an explicit plan that contained neutral criteria and limited the discretion and conduct of the law enforcement officers charged with the responsibility of stopping vehicles at the roadblock. *Burns*, 261 Va. at 322, 541 S.E.2d at 883.

The Virginia Supreme Court then distinguished *Edmond*, noting that while the roadblock in the case before it was obviously not related to policing the borders or ensuring highway safety, its purpose was not "simply to investigate ordinary criminal wrongdoing as was the checkpoint in *Edmond*." *Burns*, 261 Va. at 323, 541 S.E.2d at 883. Instead, it noted, the roadblock was "specifically designed to investigate a particular murder that had recently occurred in the area where the roadblock was placed," and police "were not stopping vehicles merely to discover evidence of crimes in general." *Burns*, 261 Va. at 323-24, 541 S.E.2d at

883-84. Finally, the court noted that *Edmond* had recognized that "'there are circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control.'" *Burns,* 261 Va. at 323, 541 S.E.2d at 883, quoting *Edmond,* 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455. The court concluded that the roadblock fell within the exception recognized by *Edmond* and, therefore, did not contravene the fourth amendment. *Burns,* 261 Va. at 324, 541 S.E.2d at 884.

Similarly, I would find that the roadblock in the present case did not violate fourth amendment principles. At the time police set up the roadblock, the offender remained at large with his identity unknown. Thus, he continued to pose a safety risk to others on the road. Moreover, even if the perpetrator was not an immediate threat, the same exigent circumstances found to exist in *Burns* were present here because police had to move relatively quickly to canvass the area at the appropriate time or risk losing information about the crime. At any rate, the underlying purpose behind the roadblock furthered highway safety because of its potential to solve this particular road crime. Importantly, police did not stop vehicles to discover evidence of crime in general, and the roadblock was appropriately tailored in terms of timing and placement to provide for the most reasonably likely opportunity of discovering further information about the crime. Also like *Burns,* the intrusion on motorists in the present case–they were merely stopped long enough to alert them of the crime and to ask them if they had seen anything–was much less than the intrusion in *Edmond.*

Additionally, I note that the roadblock in the present case was perhaps even more justifiable than the one in *Burns* when comparing the two cases with *Edmond.* Here there was the additional connection to roadway safety in that the

crime was accomplished through the use of an automobile at the same location on the highway where the roadblock was eventually conducted. Under these circumstances, I would hold that a police roadblock does not *per se* violate the fourth amendment proscription against unreasonable searches and seizures where the roadblock is designed to gather information about a specific, known crime that is a matter of grave public concern.

II. Application of the *Brown* Balancing Test

Given my conclusion that *Edmond* does not categorically prohibit the type of roadblock at issue in the present case, I believe that it is incumbent upon this court to assess the validity of the roadblock in relation to the factors noted in *Brown v. Texas,* 443 U.S. 47, 61 L. Ed. 2d 357, 99 S. Ct. 2637 (1979). It is well settled that a vehicle stop at a roadblock or highway checkpoint effectuates a seizure within the meaning of the fourth amendment. *Edmond,* 531 U.S. at 40, 148 L. Ed. 2d at 342, 121 S. Ct. at 453; *People v. Bartley,* 109 Ill. 2d 273, 280 (1985). However, a roadblock where individuals are stopped without probable cause or individualized suspicion is not a *per se* violation of the fourth amendment; the question of whether a roadblock violates the fourth amendment is one of reasonableness, requiring the weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty. *Brown,* 443 U.S. at 50-51, 61 L. Ed. 2d at 361-62, 99 S. Ct. at 2640; *Bartley,* 109 Ill. 2d at 280.

The factors set forth in *Brown* require a court to balance the State's asserted interest for the roadblock against the "objective" and "subjective" intrusion on the motorist. *Prouse,* 440 U.S. at 656, 59 L. Ed. 2d at 669, 99 S. Ct. at 1397; *Martinez-Fuerte,* 428 U.S. at 558, 49 L. Ed. 2d at

1128, 96 S. Ct. at 3083. The objective intrusion is measured by such factors as the length of the stop, the nature of the questioning, and whether a search is conducted; the subjective intrusion relates to the concern, fright, or annoyance on the part of the motorist. *Bartley,* 109 Ill.2d at 282. The crucial inquiry in assessing the subjective intrusion involves a consideration of whether the field officers were acting with unbridled discretion. *Bartley,* 109 Ill.2d at 289. Factors important in that inquiry include the following: (1) whether the decision to establish the roadblock and its location are made by supervisory personnel of the police department such as a lieutenant or captain; (2) whether all vehicles are stopped in a systematic, preestablished manner such as stopping all traffic in a given direction; (3) whether guidelines exist on the operation of the roadblock; (4) whether advance publicity of the intention of police to establish the roadblock was given; and (5) whether a sufficient show of the official nature of the operation was made through such means as the presence of a number of police vehicles with flashing lights and uniformed officers. *Bartley,* 109 Ill. 2d at 288-91.

Application of the *Brown* factors to the instant case leads to the conclusion that the roadblock established by the Lombard police department passed constitutional standards. The department made the decision to set up the roadblock because of a fatal hit-and-run accident that had been committed in the precise area of the roadblock, and officials did not know the identity of the offender responsible for the crime. That the perpetrator was still at large was indeed a matter of grave public concern, and the roadblock advanced that concern by aiding in the investigation of the crime. Moreover, the timing of the roadblock, exactly one week after the crime at approximately the same time of day, was purposely designed to stop motorists who might routinely travel that route at the end of their work shift and thus was narrowly tailored for maximum effectiveness.

Thus, I would find that the State's interest in the roadblock was sufficient to outweigh a minimal intrusion on the motorist.

Additionally, the intrusion in this case was in fact minimal. Objectively, the physical nature of the intrusion was insubstantial. Motorists were detained approximately 10 to 15 seconds, just long enough for police to hand out a flyer and alert motorists of the accident the previous week. Drivers were not asked for their names, driver's licenses, or insurance cards and they were not checked for seat belt violations. In relation to the vehicle occupants subjected to the stop, there was indisputably no crime-detection purpose behind the roadblock.

Likewise, the subjective nature of the intrusion was minimal. The record indicates that a high-ranking lieutenant in the police department called the meeting to inform the officers that they were to participate in the roadblock. Vehicles were stopped in a systematic and preestablished manner–all eastbound traffic was stopped and this was not a roving patrol. Although an officer participating in the roadblock admitted that there were no written guidelines for "informational roadblocks" contained in the department's written guidelines, the department did have guidelines for roadblocks generally, and there is no indication that the officers in the field did not follow the preestablished procedure for this particular roadblock. Although the roadblock itself may not have been publicized in advance, it is clear that the basis for the roadblock had been well-publicized, which would have likely minimized any apprehension motorists may have otherwise experienced upon encountering it. Finally, any anxiety motorists may have felt was dissipated by the official nature of the operation–there was a large number of emergency vehicles present with flashing lights and officers clad in orange police vests.

III. Proliferation of Roadblocks

Lastly, I note that the majority cites statistics of the thousands of felonies that occur in Illinois each year to support its argument that, if this particular roadblock were upheld, roadblocks generally would become a routine way of life. The statistics cited by the majority, however, are irrelevant to this discussion, and the majority's argument based thereon is unfounded and unpersuasive. The majority misses the point that the justification for this particular roadblock was that a fatal hit-and-run accident had occurred on the highway, that the roadblock was also justified by its connection to highway safety, and that it amounted to mere canvassing for information. Missing from the list of statistics cited by the majority is the amount of *fatal* hit-and-run accidents that occur on major thoroughfares like Route 64, the scene of the fatal vehicular crime that lead to the roadblock in this case.

The majority's reasoning is also defused by the reality that the amount of roadblocks would be limited by the scarce public resources available to police. Moreover, even when a police department determines that it is a justifiable use of their limited manpower and resources to set up an informational roadblock, the constitutionality of the roadblock would still be subject to the three-prong reasonableness test of *Brown* as well as the principles set forth in *Edmond*.

IV. Conclusion

For the foregoing reasons, I would reverse the judgment of the appellate court and reinstate defendant's conviction. Accordingly, I respectfully dissent.

JUSTICES FITZGERALD and GARMAN join in this dissent.

[Filed March 30, 2001]

No. 2–99–1288

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	No. 97–DT–3462
v.	)	
	)	Honorable Mark W. Dwyer,
ROBERT S. LIDSTER,	)	Judge, Presiding.
Defendant-Appellant.	)	

JUSTICE McLAREN delivered the opinion of the court:

Following a jury trial, defendant, Robert Lidster, was convicted of driving under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 1998)). Defendant was arrested after being stopped at an "informational roadblock" conducted by the Lombard police department. He appeals, contending that the trial court erred in denying his motion to quash his arrest and suppress evidence because the roadblock was an unreasonable seizure.

On August 30, 1997, Lombard police set up an "informative stop" on North Avenue, at the location of a hit-and-run accident a week before. The officers intended to stop all eastbound traffic and pass out flyers about the accident, hoping that someone had witnessed the incident and could provide information about the offender or his vehicle.

While conducting the roadblock, Detective Wayne Vasil was standing in the center lane of North Avenue. As each vehicle pulled up, an officer would hand the driver a flyer about the accident. One such vehicle was defendant's Mazda minivan, which almost struck Vasil as defendant approached. At that point, Vasil was not aware that defendant had violated any state law or city ordinance, although he had "some sort of feeling that something might be wrong." Vasil stated that defendant's van had already been stopped pursuant to the roadblock before nearly striking him.

Vasil approached the van to ask defendant why he had almost hit him. During the ensuing conversation, Vasil began to suspect that defendant might be under the influence of alcohol. As a result, he directed defendant to pull onto a side street for field sobriety tests. Another officer conducted the tests and defendant was arrested for driving under the influence of alcohol.

Defendant moved to quash his arrest, arguing that the roadblock was unconstitutional. The trial court denied the motion. Subsequently, a jury found defendant guilty and the court sentenced him to court supervision. After the court denied his posttrial motion, defendant filed a timely notice of appeal.

On appeal, defendant renews his argument that the roadblock was unconstitutional. He contends that, under the balancing test developed by the state and federal courts, the public interest in conducting the roadblock—searching for evidence about a prior crime—did not outweigh the intrusion on the rights of innocent motorists.

A fourth amendment seizure occurs when a vehicle is stopped at a checkpoint. *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 450, 110 L. Ed. 2d 412, 420, 110 S. Ct. 2481, 2485 (1990); *People v. Fullwiley*, 304 Ill. App. 3d 44, 49 (1999). Whether a particular roadblock or similar

device violates the fourth amendment is a question of reasonableness. *People v. Bartley*, 109 Ill. 2d 273, 280 (1985). The test courts have developed to assess the reasonableness of a procedure involves balancing the intrusion on an individual's fourth amendment interests against the program's promotion of legitimate government interests. *Delaware v. Prouse*, 440 U.S. 648, 59 L. Ed. 2d 660, 667-68, 654, 99 S. Ct. 1391, 1396 (1979). This in turn requires the court to weigh the gravity of the public concerns served by the seizure and the degree to which the seizure advances those interests against the severity of the interference with individual liberty. *Brown v. Texas*, 443 U.S. 47, 50-51, 61 L. Ed. 2d 357, 361-62, 99 S. Ct. 2637, 2640 (1979); *Bartley*, 109 Ill. 2d 273, 280.

After the parties filed their briefs, the United States Supreme Court decided *City of Indianapolis v. Edmond*, 531 U.S. ___, 148 L. Ed. 2d 333, 121 S. Ct. 447 (2000). There, citizens sought to enjoin the city's use of roadblocks to search for evidence of drug trafficking. The court found the roadblock program unconstitutional because its sole purpose was to uncover evidence of "ordinary criminal wrongdoing." *Edmond*, 531 U.S. at ___, 148 L. Ed. 2d 343, 121 S. Ct. at 454. Noting that its roadblock cases had recognized only a limited exception to the rule that a seizure must be accompanied by some measure of individualized suspicion, the *Edmond* majority observed that the roadblocks the Court had previously approved were designed to further a compelling purpose such as promoting highway safety by targeting drunk drivers (see *Sitz*, 496 U.S. at 455, 110 L. Ed. 2d at 423, 110 S. Ct. at 2488) or policing the border to stanch the flow of illegal aliens (see *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-52, 49 L. Ed. 2d 1116, 1124-25, 96 S. Ct. 3074, 3080 (1976)). *Edmond*, 531 U.S. at ___, 148 L. Ed. 2d at 341-42, 121 S. Ct. at 452-53. However, the Court declined "to suspend the usual requirement of individualized suspicion where the police seek to employ a

checkpoint primarily for the ordinary enterprise of investigating crimes." *Edmond*, 531 U.S. at ___, 148 L. Ed. 2d at 345, 121 S. Ct. at 455.

Although the roadblock in this case is in some ways different from the one at issue in *Edmond*, it is impossible to escape the conclusion that the roadblock's ostensible purpose was to seek evidence of "ordinary criminal wrongdoing." Vasil testified that the roadblock was set up in the hope of obtaining more information about a driver responsible for killing a bicyclist a week earlier. The police stopped cars near the site of the accident and at about the same time of day the accident occurred in the hope that someone who left work at that time or otherwise traveled that route regularly might have seen the accident. The express purpose of the roadblock was to search for evidence of a crime.

Edmond did leave open the possibility that an "emergency" might justify a checkpoint the purpose of which would ordinarily be considered routine crime control. The Court gave as examples preventing an imminent terrorist attack and catching a dangerous criminal "who is likely to flee by way of a particular route." *Edmond*, 531 U.S. at ___, 148 L. Ed. 2d at 345, 121 S. Ct. at 455. Clearly, no such emergency was present here. The crime in question had occurred a week before. Moreover, the officers did not testify that they expected even to catch the offender; they merely wanted to get a more accurate description of him. This is the type of routine investigative work that the police must do every day and does not justify the extraordinary means chosen to further the investigation.

One apparent concern of the Court in *Edmond* was that, if "the ordinary enterprise of investigating crimes" (*Edmond*, 531 U.S. at ___, 148 L. Ed. 2d at 345, 121 S. Ct. at 455)) could be the basis for a checkpoint, there would be no theoretical limit on when such tactics could be employed and the requirement of individualized suspicion would be

nullified. While the crime under investigation here, involving the death of an innocent person, is undoubtedly serious, equally serious crimes unfortunately happen every day in many jurisdictions. If investigating such a crime could be the basis for a roadblock, police could stop all cars entering or leaving town virtually every day on the chance that someone might have seen something that would aid the investigation.

Such unbridled use of checkpoints also leaves open the possibility of police subterfuge, using the pretense of investigating some infamous crime to stop motorists based on "the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." *Edmond*, 531 U.S. at ___, 148 L. Ed. 2d at 345, 121 S. Ct. at 455. We note that in this case a second officer was stationed on a side street, apparently to prevent drivers from evading the roadblock. This tends to discredit the explanation that the police were merely seeking information. Presumably, if a motorist were willing to provide information to the police, he or she would not attempt to avoid the roadblock.

The State argues that the public interest in seeing the hit-and-run solved was not insubstantial and that the police took reasonable steps to minimize the intrusion on the motorists' rights. However, assuming for the sake of argument that the police did everything reasonably possible to minimize the intrusion, *Edmond* strongly suggests that a criminal investigation can never be the basis for a roadblock, at least absent some emergency circumstance not present here. Such an interest is simply not sufficiently weighty to counterbalance even a minimal intrusion on the rights of drivers stopped at the checkpoint.

Finally, although not itself dispositive, some mention should be made of the third element of the balancing equation, the degree to which the seizure advances the public

interest. The Supreme Court has required that the facts on which such an intrusion is based must "be capable of measurement against 'an objective standard.'" *Prouse*, 440 U.S. at 654, 59 L. Ed. 2d at 668, 99 S. Ct. at 1396. Generally, the choice among reasonable enforcement alternatives must be left with local governmental officials "'who have a unique understanding of, and a responsibility for, limited public resources.'" *People v. Adams*, 293 Ill. App. 3d 180, 189 (1997), quoting *Sitz*, 496 U.S. at 453-54, 110 L. Ed. 2d at 422, 110 S. Ct. at 2487. However, this does not mean that the courts must "'blindly defer to whatever enforcement techniques are chosen by officials'" because courts must analyze these techniques to ensure that they are, in fact, reasonable in the context of the fourth amendment. *Adams*, 293 Ill. App. 3d at 189-90, quoting *Holt v. State*, 887 S.W.2d 16, 19 (Tex. Crim. App. 1994). Here, the State presented no empirical evidence of the effectiveness of such a checkpoint program. In the absence of evidence to the contrary, it seems likely that more traditional law enforcement techniques would have been just as, if not more, effective than the roadblock without infringing on the constitutional rights of numerous motorists, none of whom was suspected of a crime.

Because the roadblock at which defendant was apprehended did not comply with constitutional standards, the trial court should have granted defendant's motion to quash his arrest and suppress evidence. Absent this evidence, there remains no evidence to support his conviction for driving under the influence of alcohol.

The judgment of the circuit court of Du Page County is reversed.

Reversed.

GEIGER and BOWMAN, JJ., concur.

(14)

NO. 02-1060

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

PEOPLE OF THE STATE OF ILLINOIS
Petitioner,

vs.

ROBERT S. LIDSTER
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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12 pp

QUESTION PRESENTED FOR REVIEW

Whether *Indianapolis v. Edmond*, 531 U.S. 32 (2000) allows police officers to establish roadblocks for the ordinary enterprise of investigating crime in the absence of exigent circumstances or individualized suspicion.

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STATEMENT OF THE CASE

For the most part, the Petitioner's Statement of the Case accurately and completely portrays the facts in this case.

REASON FOR DENYING THE WRIT

***Certiorari* should not be granted because the State's Petition presents no issue not previously resolved by this Court.**

This Court's "checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion." *Indianapolis v. Edmond*, 531 U.S. 32, 41 (2000). This Court in *Edmond* declined to suspend the usual requirement of individualized suspicion where the police sought to employ a checkpoint primarily for the ordinary enterprise of investigating crime. *Indianapolis v. Edmond,* 531 U.S. at 44. In its Petition, the State of Illinois seeks simply to utilize suspicionless seizures for the ordinary enterprise of investigating crime. As the petition herein seeks to expand this Court's clearly drawn limitations in a fashion rejected by the Court in *Edmond*, there is no reason to grant *certiorari*.

"It is impossible to escape the conclusion that the roadblock's ostensible purpose was to seek evidence of 'ordinary criminal wrongdoing.'" *People v. Lidster*, 319 Ill.App.3d 825, 828 (2nd Dist. 2001). The State terms the roadblock in the instant case an "informational" roadblock, as the police were handing out flyers to stopped motorists, but it is clear that, more than simply seeking to *impart* information to the public, the police sought to *obtain* information from the public. Had the police intended to provide information, they certainly had available to them the use of publication by radio, television or newspapers, or the posting of flyers at the businesses from which the police thought potential witnesses might be driving when they instituted the roadblock. Moreover, at the roadblock, a second officer was stationed so as to prevent drivers from evading the roadblock, thus discrediting the State's contention that the "checkpoint's primary (and, in fact only) purpose was to seek information about an existing crime, not to attempt to make new defendants of those stopped at the

checkpoint." (Petitioner's Petition, p. 6). *See People v. Lidster*, 319 Ill.App.3d 825, 827 (2nd Dist. 2001). That the roadblock served as a seizure for the purpose of investigating crime, therefore, cannot be questioned. *People v. Lidster*, 319 Ill.App.3d at 828; *See also, Michigan Department of State Police v. Sitz*, 496 U.S. 444, 450, (1990); *United States v. Martinez-Fuerte*, 428 U.S. 543, 556, (1976); (Petitioner's Petition, p.4). Thus, the question is whether the seizure was unreasonable.

A seizure conducted in the absence of individualized suspicion is presumed unreasonable. *Chandler v. Miller*, 520 U.S. 305, 308 (1997). Thus, this Court has upheld suspicionless seizures only where the program was designed to serve special needs, beyond the normal needs for law enforcement. *Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000). Never, however, has this Court upheld a checkpoint program the purpose of which was to detect evidence of criminal wrongdoing. *Edmond*, 531 U.S. at 37-38.

Where checkpoints have passed constitutional muster in the absence of individualized suspicion, there has always been a significant public interest. In *United States v. Martinez-Fuerte*, the Court found that, despite a long-standing national policy to limit immigration into the United States, as many as 12 million illegal immigrants may be in the country, 85 percent of whom come from Mexico, which shares a border with the U.S. that is nearly 2,000 miles long. *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-552 (1976). Patrolling this border was found to present formidable law enforcement problems, and the Court upheld the use of checkpoints because of the "great" need. *United States v. Martinez-Fuerte*, 428 U.S. at 557.

Similarly, this Court upheld a highway sobriety checkpoint because of its need to combat a serious public danger, finding that "drunk drivers cause an annual death toll of over 25,000 and in the same time span cause nearly one million personal injuries and more than five billion dollars in

property damage." *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 451 (1990). Moreover, the danger presented in Sitz was considered an "immediate hazard." *Edmond*, 531 U.S. at 39. Thus the gravity of the drunk driving problem and "the magnitude of the State's interest in getting drunk drivers off the road weighed heavily in the Court's determination that the program was constitutional. *Id.*

Thus, a seizure is unreasonable, and therefore unconstitutional, if it is the result of a suspicionless stop unless it is part of a program created to combat an immediate hazard (as in *Sitz*), or because of a great need (as in *Martinez-Fuerte*). Conversely, suspicionless stops have been invalidated where the purpose of the stop was to investigate crime. *See Delaware v. Prouse*, 440 U.S. 648 (1979). Thus, the Court stated in *Edmond*: "Not only does the common thread of highway safety run through *Sitz* and *Prouse*, but *Prouse* itself reveals a difference in the Fourth Amendment significance of highway safety interests and the general interest in crime control." *Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000).

Thus, *Edmond*, like *Sitz*, requires that the State demonstrate the need for a checkpoint to respond to an immediate threat in order to consider such a suspicionless stop constitutional. No such threat existed in the instant case. Indeed, it is uncontroverted that the purpose of the checkpoint was not to deter or to police crime, but to investigate a crime that had occurred one week prior to the seizure of defendant.

The State attempts to distinguish *Edmond* by arguing that the purpose of the checkpoint was not to seek evidence of Defendant's criminal conduct, but was to seek evidence of other criminal conduct. (Petitioner's Petition p.6). Moreover, the State argues that since the checkpoints cited in *Edmond* (including *Prouse*, in which this Court invalidated the checkpoint) were used to interdict

ongoing unknown crimes, there exists no prohibition against suspicionless searches where no immediate threat exists.

The Illinois Supreme Court properly rejected the State's implied definition of "crime control." The State asserts "a distinction between gathering information leading to the arrest and prosecution of a motorist as the perpetrator of a crime, and gathering information from a motorist leading to the identification of *another* motorist as the perpetrator of a crime." *People v. Lidster*, 202 Ill.2d 1, 8-9, 779 N.E.2d 855 (2002). In the State's view, in the above example, the former represents crime control, but the latter does not. The State's definition of "crime control" thus includes only the arrest of a perpetrator, and does not involve any investigation or information gathering that leads to the arrest. Because police efforts are directed at general crime control, whether by way of investigating or solving any crime, the Illinois Supreme Court properly applied this Court's refusal to "suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crime." *Lidster*, 202 Ill.2d at 6, *quoting with approval, Edmond*, 531 U.S. at 44.

The Illinois Supreme Court also properly considered the concerns expressed by this court in *Edmond*, that allowing the police to utilize investigative roadblocks for a minimum period of seven days following an offense would make roadblocks "a routine part of American life," a scenario this Court sought to avoid in *Edmond*. *Edmond*, 531 U.S. at 42. The Illinois Supreme Court properly considered this concern, noting that in the year 2001 the police recorded 627 murders, 26,660 assaults, 19,449 robberies, 28,401 burglaries, 105,728 thefts, 35,570 motor vehicle thefts and 1,106 arsons in the city of Chicago alone. *Lidster*, 202 Ill.2d at 10. Allowing informational roadblocks seeking potential witnesses for each of the above offenses for at least one week following each

offense raises the troubling specter that Chicago "would be adorned with roadblocks." *Id.*

Neither *Lidster* nor *Edmond* prevent the State from utilizing roadblocks in the event of an emergency. Indeed, the Court in *Edmond* specifically set forth, as examples of permissible roadblocks, attempts to thwart an imminent terrorist attack, or an effort to catch a dangerous criminal who is likely to flee by way of a particular route. *Indianapolis v. Edmond*, 531 U.S. at 44. It is the latter example which distinguishes this case from *Burns v. Commonwealth*, 541 S.E.2d 872 (2001), cited by the State and *Amicus* to demonstrate a split among the states. In *Burns*, the police established a roadblock at a murder scene less than seven hours after the brutal rape and murder of a seventy-three-year-old woman was discovered. The court in *Burns* considered that matter an exception to the rule espoused in *Edmond* because of the exigent nature of the matter. *Burns*, 541 S.E.2d at 884. Conversely, there was no indication in the instant case that the motorist remained in the vicinity or posed any further danger to local residents. *Lidster*, 202 Ill.2d at 11. Thus, *Burns* is distinguishable from this case.[1] Further, *Burns* demonstrates the ready applicability of *Edmond* to allow the use of roadblocks in an emergency, while preventing their use for general crime control.

The final prong in the balancing test used to evaluate checkpoints questions the extent to which the checkpoint could reasonably be said to advance the State's interest. *Sitz*, 496 U.S. at 455; *Brown v. Texas*, 443 U.S. 47, 50-51, 99 S.Ct. 2637 (1979). Both the State and the *Amicus Curiae* assert that checkpoints such as the one used in the instant case are effective law enforcement techniques, but neither cites any empirical data to support the claim. Indeed, the checkpoint here

[1] *Burns* is further distinguishable as there was a question as to whether the defendant was stopped or had approached the police voluntarily. 541 S.E.2d at 315. The Virginia Court also noted that Burns's statements would be admissible even were the stop invalidated as the connection between the stop and the evidence was dissipated by subsequent acts. *Burns*, 541 S.E.2d at 884 n.11.

failed to achieve its goal.

In summary, the checkpoint in this case is unconstitutional as it was an unreasonable seizure. An investigative stop can be upheld only where individualized suspicion exists or a significant public interest faces an immediate and great threat. Otherwise, the police would be able to routinely stop citizens without just cause, thereby violating another public interest, that being the security guaranteed by the Fourth Amendment. In *Edmond*, this Court drew "the line at roadblocks designed primarily to serve the general interest in crime control." *Edmond* at 42. There is even some concern as to whether the Constitution permits *any* suspicionless roadblock seizures. *See, Edmond*, 531 U.S. at 56. ("I rather doubt that the Framers of the Fourth Amendment would have considered "reasonable" a program of indiscriminate stops of individuals not suspected of wrongdoing.") (Thomas, J., Dissenting). Thus, the Illinois Supreme Court in *Lidster* properly adhered to the clear limitations drawn by this Court. Because *Lidster* and *Edmond* follow a long line of this court's cases which allows only a limited exception for exigencies or matters of great national need, this issue need not be revisited, and the Petition for Writ of *Certiorari* should be denied.

CONCLUSION

For the aforementioned reasons, Respondent, Robert S. Lidster, respectfully requests that this Honorable Court deny the State's Petition for Writ of *Certiorari*.

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APR 14 2003
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(3)

No. 02-1060

In the Supreme Court of the United States

ILLINOIS,

Petitioner,

vs.

ROBERT S. LIDSTER,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

REPLY BRIEF FOR PETITIONER

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Printed by Authority of the State of Illinois (P.O. 40239—58—4-16-03)

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ARGUMENT

Certiorari should be granted because this case presents an important legal question about the scope of *Indianapolis v. Edmond*, 531 U.S. 32 (2000), and because two state supreme courts stand in direct conflict on the question presented. Specifically, that question is whether *Edmond* prohibits police officers from conducting a roadblock with the primary purpose of investigating a prior offense, where the stopped motorists were handed flyers and only asked if they had witnessed the fatal hit-and-run, and were not, themselves, searched for evidence of criminal activity, and where the roadblock was otherwise reasonable under *Brown v. Texas*, 443 U.S. 47 (1979).

Erroneously assuming that *Edmond* controls this case, Respondent claims that the Petition "presents no issue not previously resolved by this Court." (Opp. Brief at 2).[1] Respondent's mistake derives from his inability to distinguish the instant checkpoint program from the one involved in *Edmond*. Respondent argues that "crime control" should not only include the arrest of a perpetrator but should include any investigation or information-gathering that leads to the arrest. (Opp. Brief at 5). This argument over-simplifies the issue. "Crime control," as contemplated under *Edmond*, is not the arrest of *a* perpetrator of a known crime; it envisions the arrest of many perpetrators whose crimes are only discovered by the happenstance of a police stop. At checkpoints primarily aimed at crime control, officers look at each stopped motorist as if he is a potential criminal, searching for evidence of yet unlearned criminal activity. But, here, the primary purpose of the roadblock was not to control the incidence of crime in general; indeed, that was not even a secondary purpose:

---

[1] "Opp. Brief" refers to Respondent's Brief in Opposition to Petition for Writ of Certiorari filed in this case.

Motorists were not asked for their names, drivers' licenses, or vehicle registrations. Nor were they searched for signs of impairment—or even seatbelt violations. This roadblock's lack of secondary purposes makes this an ideal case for review, as it presents a clean question about *Edmond*'s scope.

Claiming that this roadblock's purpose was to detect evidence of ordinary criminal wrongdoing, Respondent hints at a pretext or a hidden purpose behind the stated objective of the checkpoint. Specifically, Respondent states that a second officer, stationed at a side street to catch checkpoint evaders, defeats the declared purpose of the roadblock, which was to disseminate and gather information on a particular crime. (Opp. Brief at 2). Respondent further claims that other means existed to disseminate that information, specifically, media publication or posted flyers. *Id.* These claims are specious, inasmuch as the Illinois Supreme Court never challenged the primary purpose of the roadblock, and its ruling was based on the assumption that "[t]he purpose of the roadblock was to obtain information from motorists regarding a hit-and-run accident that took place one week earlier, at the same location, and at the same time of day." (Pet. App. at 1-2).[2] Further, the existence of alternative ways of disseminating information does not render the means chosen unreasonable.

Edmond did not create a *per se* rule against crime-specific informational roadblocks. Nor did it forsake the standard, three-part test for determining a roadblock's reasonableness, found in *Brown v. Texas*, 443 U.S. 47 (1979). In fact, this Court, in *Edmond*, carefully avoided limiting "the purposes that may justify a checkpoint

[2] "Pet. App." refers to the Appendix joined to Petitioner's Petition for Writ of Certiorari filed in this case.

program to any rigid set of categories," *Edmond*, 531 U.S. at 44, and provided that its holding would not alter the constitutional status of the checkpoints in *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990), or *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), or the method of determining the constitutionality of those checkpoints, namely the *Brown* balancing test. *Edmond*, 531 U.S. at 47.

Even *Delaware v. Prouse*, 440 U.S. 648 (1979)—which Respondent misreads to advance his theory that suspicionless stops are invalid when their purpose is crime investigation—employed *Brown*'s balancing test. In fact, the stop in *Prouse* was invalidated because it, essentially, failed the effectiveness prong of the three-prong balancing test. Specifically, this Court found that, although states have a vital interest in ensuring that drivers are licensed and registered, the discretionary and random stop of a motorist to check his driver's license and registration is not a sufficiently productive means to address that interest. *Prouse*, 440 U.S. at 658-59. Significantly, *Prouse* suggested that the state's interest could be lawfully achieved by a checkpoint program, a suggestion this Court has affirmed in *Edmond*. *Edmond*, 531 U.S. at 39.

After practically ignoring *Brown*'s reasonableness test as a method of determining a roadblock's constitutionality, Respondent argues that one of the three elements of the test—the roadblock's effectiveness—is unsatisfied by the lack of empirical data in this case. (Opp. Brief at 6). But common sense dictates that a narrowly tailored roadblock, set up exactly one week after the crime, at approximately the same time of day—in order to stop motorists who travel a regular route to work—provides a reasonable likelihood of finding witnesses to the crime.

Respondent reiterates the concern expressed by the Illinois Supreme Court, that the allowance of crime-specific

informational roadblocks would threaten to make roadblocks routine. (Opp. Brief at 5). The State sufficiently addresses this concern in its Petition and rests on its response here.

Certiorari should further be granted because two state supreme courts stand in direct conflict on this issue. After evaluating the constitutionality of its roadblock under *Brown*'s reasonableness test, the Virginia Supreme Court, in *Burns v. Commonwealth*, 261 Va. 307, 541 S.E.2d 872 (2001), concluded that a roadblock organized with the primary purpose of investigating a particular murder that recently occurred in the area, was not unconstitutional under *Edmond*. *Burns*, 261 Va. at 324. This holding directly conflicts with the Illinois Supreme Court's holding that a roadblock, organized with the primary purpose of investigating a hit-and-run, was unconstitutional under *Edmond*.

Claiming no conflict exists, Respondent argues that the type of roadblock in *Burns* was contemplated in *Edmond* and excepted from its general rule.[3] (Opp. Brief at 6). Acknowledging *Edmond*'s two examples of roadblocks allowed in exigent circumstances—efforts to thwart an imminent terrorist attack and to catch a dangerous criminal likely to flee via a particular route—Respondent claims that the *Burns* checkpoint fits within the latter example. *Id.* In support, Respondent notes that *Burns* found its roadblock to fall within *Edmond*'s exigent circumstances exception, and claims that the instant roadblock lacks like exigencies. *Id.*

[3] Respondent also attempts to distinguish this case from *Burns* by questioning whether Burns was stopped at the roadblock and by noting that the evidence in that case would have been admissible even if the roadblock were invalid. Both attempts are fruitless. *Burns* clearly relied on a Fourth Amendment analysis, finding that "the circumstances under which Burns stopped his vehicle as he approached the roadblock was a 'stop' and thus a 'seizure' under the Fourth Amendment." *Burns*, 261 Va. at 883.

Although the *Burns* court may have used the phrase "exigent circumstances," it found that the primary purpose of that roadblock—to wit, a murder investigation—did not fall within *Edmond*'s proscription against roadblocks organized for the primary purpose of investigating ordinary criminal wrongdoing. *Burns*, 261 Va. at 322. Significantly, the *Burns* roadblock was not organized to directly *catch* the fleeing felon, as the *Edmond* exception exemplifies, but, rather, to investigate a murder. As law enforcement officers did not even know the felon's identity or whereabouts at the time of the roadblock, they intended only to canvass drivers in the area for witnesses to the crime. *Burns*, 261 Va. at 322.

In sum, *Certiorari* should be granted because this case involves an important legal question about *Edmond*'s scope and application, and because two state supreme courts stand in conflict on this issue. At stake is the ability of law enforcement officers to perform their timeless and necessary functions of identifying witnesses to crimes.

CONCLUSION

For the aforementioned reasons, Petitioner, the State of Illinois, respectfully requests that this Honorable Court grant *Certiorari*, reverse the decision of the Supreme Court of Illinois, and remand for further proceedings.

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Supreme Court, U.S.
FILED
FEB 13 2003
OFFICE OF

No. 02-1060

In The Supreme Court Of The United States

ILLINOIS

Petitioner,

v.

ROBERT S. LIDSTER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF OF OHIO AND 13 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether *Indianapolis v. Edmond*, 531 U.S. 32 (2000), prohibits police officers from conducting a checkpoint organized to investigate a prior offense, at which checkpoint law enforcement officers briefly stopped all oncoming motorists to hand out flyers about—and look for witnesses to—the offense, where the checkpoint was conducted exactly one week after—and at approximately the same time of day as—the offense, and where the checkpoint otherwise met the reasonableness standard articulated in *Brown v. Texas*, 443 U.S. 47 (1979).

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STATEMENT OF AMICI INTEREST AND SUMMARY OF ARGUMENT

Ohio and 13 other states urge the Court to grant certiorari and reverse the decision of the Illinois Supreme Court. Ohio and the other state amici, like Illinois itself, serve as guardians of public order within their respective jurisdictions, and accordingly share with Illinois an obvious interest in the question. In a proper case, briefly stopping motorists at a checkpoint provides officers an invaluable tool for gathering information regarding previously-committed offenses. Inappropriate limitations on the use of such checkpoints, like those imposed by the court below, wrongly deny the States access to this vital investigative tool. The question presented also reflects a direct conflict between two

state supreme courts as to the proper scope of this Court's ruling in *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). The uncertainty created by this conflict on such an important constitutional question further frustrates legitimate State law-enforcement efforts.

The question is presented in the context of a case where police officers briefly stopped motorists, including the defendant, at a checkpoint designed to uncover information regarding a fatal hit-and-run accident that occurred at the same location the week before. Pet. App. 2, 23. In connection with their investigation, officers decided to briefly stop eastbound traffic at the former accident site during the approximate time of the day when the accident had occurred. Pet. App. 23. They did so for the sole purpose of distributing flyers seeking information about the accident. Pet. App. 23. They specifically sought information about a Ford Bronco or large pickup truck implicated in the accident. Pet. App. 2. The petitioner asserts the roadblock was "narrowly tailored" to connect with potential witnesses "leaving a regular shift near the hit-and-run who may have seen something valuable." Pet. 2.

One vehicle, that driven by Lidster, almost struck an officer. *Id.* The officer testified that defendant's van "had already been stopped pursuant to the roadblock before nearly striking him." Pet. App. 24.[1] Based on the erratic driving,

[1] Since Lidster's van was already subject to the checkpoint stop at the time of the incident, a "seizure" had occurred inasmuch as Lidster's driving – however imperfectly – evidenced his "submission to the assertion of authority" by the police at the checkpoint. *See California v. Hodari D.*, 499 U.S. 621, 626 (1991).

the officer suspected intoxication. His suspicions were confirmed by sobriety tests that ultimately led to a DUI conviction.

In his criminal case, Lidster challenged the validity of the stop. A deeply divided Illinois Supreme Court upheld his challenge. A bare, 4-3 majority found that *Edmond's* language proscribing suspicionless stops undertaken for "generalized purposes of crime control" extended beyond its original scope to include stops used to investigate previously-committed crimes. Pet. App. 6, 7.

The dissent countered that *Edmond* requires individualized suspicion *solely* when a stop is "justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." Pet. App. 14, citing *Edmond*. Quite simply, the dissent would hold – correctly, in the view of the amici States – that *Edmond*'s teaching only applies where officers set up a checkpoint to "fish" for an offense, and does not cover the situation presented here where officers are pursuing a legitimate, reasonable course of action as part of a pending investigation of a known offense.[2]

The issue is significant for two reasons. First, by incorrectly expanding *Edmond* to include the facts presented here, the Illinois Supreme Court is preventing officers from

[2] The dissenting opinion also pointed to the particular connection between the investigation in this case – a fatal hit-skip accident – and policing the highways: "The canvassing for information about a deadly hit-and-run crime that happened on the roadway would serve the purpose of highway safety in a similar fashion to checking licenses to ensure that only qualified drivers are operating motor vehicles." Pet. App. 16. However, the amici States' position is that the checkpoint is justified not by the particular connection of the offense to motor traffic, but by the reasonable connection of the checkpoint to the pending investigation of a serious offense.

initiating useful, and entirely legitimate, contact with citizens (and potential witnesses) whenever those most likely to have relevant information happen to be either driving, or riding in, an automobile. Second, the reasoning underlying the lower court's holding raises substantial issues about a type of official action this Court explicitly endorsed in *Edmond*: the general stopping of cars along a route a fleeing criminal will likely use to escape. *Edmond*, 531 U.S. at 44.

As to this second point, the lower court's decision is troubling because it fosters uncertainty about which checkpoints are constitutional. If the Illinois Supreme Court is right, then a checkpoint reasonably aimed at catching a fleeing perpetrator would, in the absence of individualized suspicion as to each car stopped, be unconstitutional as a general principle. On the other hand, *Edmond's* language would continue to permit such stops when justified by some additional exigency which case precedent has not yet identified. The *Edmond* decision itself speaks of "some emergency" and a "dangerous" criminal, but furnishes no guidance as to what constitutes an emergency, or how dangerous the criminal must be. By contrast, if officers may generally use a checkpoint during the pending investigation of a particular offense when they have specific reason to believe it will advance the investigation, officers can proceed with greater confidence that they are complying with the Fourth Amendment's mandates.

Both of these governmental interests – the need for open channels of communication between police and the public, and the need for officers to feel they can take action reasonably calculated to advance a pending investigation – possess enhanced significance in an age where our Nation seeks to protect itself not only against the traditional threat of conventional crime, but against international terrorism as well.

REASONS FOR GRANTING THE WRIT

A. Two state supreme courts have split on the question presented, and the issue is both clearly drawn and important enough to merit immediate consideration.

The Illinois Supreme Court decision below squarely conflicts with the Virginia Supreme Court's decision in *Burns v. Commonwealth*, 541 S.E.2d 872 (2001). In *Burns*, the sheriff set up a "traffic-canvassing detail," *i.e.*, a roadblock at a particular location to discover whether witnesses, during those same hours on a previous day, had heard or seen anything relevant to a brutal murder. *Id.* at 879. Just as in the present case, officers stopped all traffic to establish informational contact with citizens, and did so in a manner reasonably calculated to advance the particular investigation. *Id.* at 883. In upholding the stop, the Virginia court drew the same distinction with *Edmond* that the dissent in this case urged. According to the Virginia court, because the roadblock "was specifically designed to investigate a particular [crime] that had recently occurred in the area where the roadblock was placed," and "[l]aw enforcement officers were not stopping vehicles merely to discover evidence of crimes in general," the roadblock did not contravene the Fourth Amendment. *Id.* at 884. Although both of those elements were also present here, the Illinois court reached exactly the opposite conclusion on the Fourth Amendment.[3]

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[3] In a footnote, the Virginia court noted that Burns's statements and physical evidence would also be admissible on the grounds that the connection between the traffic stop and the evidence was dissipated by subsequent acts. 541 S.E.2d at 884 n.11. Despite this passing observation , the Virginia Supreme Court clearly decided and relied upon its Fourth Amendment analysis, which held the roadblock constitutional. Additionally, it is at least arguable that some voluntary statements by Burns to officers constituted "fruits" of the involuntary traffic stop. The

The split among courts regarding *Edmond*'s reach is understandable. On the one hand, *Edmond* uses the phrases "general interest in crime control" and "ordinary enterprise of investigating crimes," which might be accorded the breadth with which the Illinois Supreme Court invested them here. On the other, *Edmond* was expressly directed toward the considerably narrower situation of "stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." 531 U.S. at 44. That latter phrase describes the facts actually presented in *Edmond* with greater precision. Because of *Edmond's* language, a widening rift among the lower courts can be expected until this Court furnishes additional clarification.

The amici States also submit that this is not a proper case for the Court to defer consideration of the issue until a greater number of lower courts have addressed it. First, there is no reason here to think that additional pronouncements by lower courts will bring greater focus and clarity to the issue. This case and *Burns* define fundamentally differing standards by which to judge the use of checkpoints during investigation of a known offense. Either *Edmond* does not reach such stops, in which case their reasonableness depends upon their rational relationship to the pending investigation; or *Edmond* requires the checkpoint be presumed unconstitutional subject to an examination of particular exigencies in the individual case. Further decisions will not clarify the character of these differing standards.

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very brevity of the suppression analysis counsels against viewing it as rendering the Fourth Amendment ruling superfluous to the outcome of the case.

Second, deferring the question until a later date perpetuates uncertainty among law enforcement policymakers, who would be left to guess at whether or not they can conduct such checkpoints, and who must worry whether the exigencies presented in a particular situation will be found to justify their actions. Society's interest in law enforcement would be better served by clear guidance from this Court resolving the split below.

B. Extending *Edmond* to cover checkpoints reasonably tailored to advance the investigation of a known offense needlessly constricts officers' opportunity to obtain valuable information from drivers and their passengers.

The Court has long recognized the affirmative value of informational contact between officers and the public outside the formal context of detention and interrogation. "There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." *Terry v. Ohio*, 392 U.S. 1, 34 (1966) (concurring opinion of White, J.). Accordingly, the Court in *Miranda v. Arizona*, 384 U.S. 436 (1966), endorsed the police practice of "seek[ing] out evidence in the field to be used at trial against" a criminal defendant, opining that "[s]uch investigation may include inquiry of persons not under restraint" and "[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process." 384 U.S. at 477-78. Giving officers the information they request constitutes an "act of responsible citizenship." *Id.*

Usually, a checkpoint is viewed from the perspective of its intrusion on the motorist's convenience. But a checkpoint where officers seek the motorist's assistance has another important aspect: it cements the police-citizen alliance against crime, and could in some cases actually

engender positive feelings in the motorist. Proponents of community policing have recognized that, where police and public engage in informational contact, "citizens like to talk to a police officer," in part because "[s]uch exchanges give them a sense of importance." J. Wilson & G. Kelling, "Broken Windows," The Atlantic Monthly, March 1982, at 29, 34. At the same time, the automobile imposes inherent obstacles to such contacts. Wilson and Kelling's famous and influential article points to the problem of officers patrolling in cars, and suggests that foot patrols may be better at fostering contact. The circumstances here present the converse: the officer tries to contact a citizen who is driving or riding in a car, and this forces her to stop the motorist to initiate contact.

In the pedestrian context, several Justices of this Court have opined that "law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions." *Florida v. Royer*, 460 U.S. 491, 497 (1983) (plurality opinion by Justice White, joined inter alia by current Justice Stevens); *see also United States v. Mendenhall*, 446 U.S. 544, 555 (1980) (opinion of Stewart, J., joined by current Chief Justice Rehnquist) ("The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals' [internal citation omitted]."). The beneficial nature of informational contacts between police and public is part of the reason why the Court has declined to subject all police questioning to Fourth Amendment scrutiny. *See Florida v. Bostick*, 501 U.S. 429, 434 (1991) (holding that "seizure does not occur simply because a police officer approaches an individual and

asks a few questions. So long as a reasonable person would be free to 'disregard the police and go about his business,' [internal citation omitted], the encounter is consensual and no reasonable suspicion is required.").

By contrast, highway safety does not permit such an *ad hoc* method of contacting drivers or their passengers. Thus, where motorists are most likely to possess information relevant to an investigation, a stop becomes unavoidable – and stopping a motorist unquestionably constitutes a Fourth Amendment "seizure," because it imposes a sufficient restraint to trigger Fourth Amendment scrutiny. *See United States v. Martinez-Fuerte*, 428 U.S. 543, 556 (1976); *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 450 (1990); *Edmond*, 531 U.S. at 40. Yet the seizure results solely from an exigency inherent in motor traffic; it does not, in the context of an informational checkpoint, manifest adversarial action by officers.

While a checkpoint inevitably imposes a Fourth Amendment seizure, the Court has recognized the minimally intrusive nature of a brief traffic stop where other motorists are subject to the same treatment, calling it "slight," *Sitz*, 496 U.S. at 451, and noting that "[o]ne's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence," *Martinez-Fuerte*, 428 U.S. at 561. Indeed, checkpoint stops are not subject to the problems that arise in other motor vehicle stops. As distinct from roving patrols, checkpoints reassure the motorist who "see[s] that other vehicles are being stopped," witnesses "visible signs of the officers' authority," and accordingly becomes "much less likely to be frightened or annoyed by the intrusion." *Id.* at 558, citing *United States v. Ortiz*, 422 U.S. 891, 894-95 (1975).

Because a seizure, however slight, has occurred, courts must determine whether the seizure is "reasonable." The open issue, post *Edmond*, is whether reasonableness in a case like the present one requires individualized suspicion of a particular driver, passenger or vehicle. The amici States respectfully submit that the important law enforcement interest in initiating informational contact outweighs the modest intrusion of a brief checkpoint stop. *Edmond* should accordingly be read to forbid only those checkpoints, like that presented in *Edmond* itself, whose purpose emanates from "the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." 531 U.S. at 44.

C. A rule that generally permits checkpoints that are reasonably calculated to advance the investigation of a known offense provides a clearer rule for officers, and at the same time obviates the need for examining the particular exigencies of each situation.

In *Edmond*, the Court acknowledged "circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control." 531 U.S. at 44. One such circumstance, according to the Court, would involve efforts to "catch a dangerous criminal who is likely to flee by way of a particular route." *Id.*

Under the lower court's reading of *Edmond* here, the general rule is that officers cannot use a checkpoint to investigate a known offense without individualized suspicion of each motorist who is stopped. While the lower court did not confront the question of stopping cars to detect a fleeing criminal, its holding would require additional Fourth Amendment analysis in order to sustain such a checkpoint. Either a special rule governs fleeing criminals, or some

particular type of exigency justifies those stops. The Court in *Edmond* did use the term "emergency," and referred to a "dangerous" criminal, but the *Edmond* opinion offers no further clarification.

The present case affords the opportunity to create clarity and certainty in this area. Under the States' submission, the checkpoint designed to "catch a dangerous criminal who is likely to flee by way of a particular route" would lie outside the holding of *Edmond*, and would be subject to review under the reasonableness standard of *Brown v. Texas*, 443 U.S. 47 (1979). That result would obviate the need for a particularized inquiry into the exigencies of each such situation.

Indeed, this case shows that requiring such exigencies to justify an informational checkpoint ill serves the Fourth Amendment balance between societal concerns and individual liberty. The Illinois Supreme Court in this case brushed aside the contention that the stop here reflected an exigency by stating "[t]here was no indication that the motorist involved posed any further danter to local residents or, indeed, that the motorist remained in the vicinity," and further noted the absence of evidence of reckless operation or drunk driving. Pet. App. 9-10. Yet the search for such exigencies ought to be irrelevant here precisely because an informational checkpoint seeks not only evidence that identifies a perpetrator, but also the very facts which indicate the importance of the investigation. A passing motorist who witnessed the crash that occurred one week earlier might inform officers that they observed reckless operation, apparent drunk driving, or even willful misconduct. On the other hand, witnesses might have information that indicates nothing more than ordinary negligence. Similarly, passing motorists might have seen the same person or vehicle involved in the crash on different occasions near the same location – indicating an ongoing threat to the community. If

police are not free to pursue informational contact with those citizens, they cannot assess the degree of threat that the wrongful conduct poses to the community. Accordingly, to require a known exigency in order to justify an informational checkpoint reverses the proper Fourth Amendment logic.

Even in the context of the greater intrusion of full custodial arrest, the Court has noted "the object of implementing" the Fourth Amendment "is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and even years after an arrest or search is made." *Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001). This case presents the Court the opportunity to fashion desperately needed "clear and simple" standards for Fourth Amendment analysis of checkpoints.

The amici States respectfully submit that the approach of the dissent in this case, not the majority below, offers the best balance and the most readily administrable rule.

CONCLUSION

For all the foregoing reasons, the writ of certiorari should be granted and the decision of the Illinois Supreme Court should be reversed.

Respectfully submitted,

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February 2003

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Is a checkpoint with a primary purpose of obtaining information from motorists about a recent fatal hit and run accident contrary to the rule of *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000)?

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INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the due process protection of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

The mobility and autonomy of automobiles pose special problems for law enforcement. Sometimes brief suspicionless seizures of vehicles are necessary to address a pressing social problem like illegal immigration or drunk driving. This makes

1. This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

   Both parties have given written consent to the filing of this brief.

automotive checkpoints an important exception to the rule that seizures must be supported by individualized suspicion.

In *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000), this Court recognized limits to the government's authority to conduct checkpoints. Automotive checkpoints motivated by a general interest in crime control, such as interdicting drugs, were too dangerous to the Fourth Amendment to be permitted. In the present case, the Illinois Supreme Court has expanded *Edmond* far beyond what this Court intended or good sense allows. Allowing *Edmond* to strike down the informative checkpoint in this case strips the police of the authority to conduct checkpoints that are reasonable under a balancing of public and private interests. The hamstringing of this important public safety procedure is contrary to the interests of public safety that CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

On August 30, 1997, police set up a checkpoint on North Avenue in Lombard, Illinois. *People* v. *Lidster*, 779 N. E. 2d 855, 856 (Ill. 2002). The checkpoint was set up to get information from passing motorists concerning a fatal hit and run accident that took place at the same spot exactly one week before at approximately the same time of the day. See *ibid.* This time coincided with people leaving work near the scene of the accident. See Pet. for Cert. 1.

Officers at the checkpoint distributed flyers to alert drivers about the accident and the need for information. *Lidster*, 779 N. E. 2d, at 856. All east-bound vehicles were stopped for 10 to 15 seconds, so that officers could hand each driver a flyer about the accident. Drivers were not asked for license or registration, nor was any effort made to check for seatbelt violations. See Pet for Cert. 2. Although the checkpoint was not publicized, the accident was well known in the area. See *ibid.*

Detective Ray Vasil, wearing an orange reflective vest with the word "Police" on it, stood about 15 feet from the checkpoint. *Lidster*, 779 N. E. 2d, at 856. As each vehicle pulled up to him, he handed a flyer to the driver. The defendant, Robert Lidster, drove up to the checkpoint in his Mazda minivan, nearly hitting Detective Vasil. Detective Vasil then asked Lidster for his driver's license and insurance card. See *ibid.* Smelling alcohol on Lidster's breath, Detective Vasil directed him to a side street, where Detective Roy Newton administered several sobriety tests. See *ibid.*

The defendant failed several of the tests and was arrested. See *ibid.* The trial court found the defendant guilty of driving under the influence of alcohol and sentenced him to one year of conditional discharge. *Id.*, at 857. Lidster also had to participate in counseling, complete a 14-day " 'Sheriff's Work Alternative Program,' " and pay a $200 fine. *Ibid.*

An Illinois intermediate appellate court reversed the conviction, holding that the checkpoint violated the Fourth Amendment under *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000). *Lidster*, 779 N. E. 2d, at 856. The Illinois Supreme Court affirmed, also holding that the checkpoint violated *Edmond*. See *id.*, at 861.

This Court granted certiorari on May 5, 2003.

SUMMARY OF ARGUMENT

This case turns on understanding the limits of *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000). Although privacy is very limited in the automobile, *Edmond* confirmed that the police do not have unlimited authority to detain motorists. An automotive checkpoint that does not contain its own limits will not pass constitutional muster.

This Court has upheld checkpoints that are aimed against crime when the justifications for these checkpoints also limit their potential growth. The rationale for immigration check-

points did not extend beyond some traffic arteries near our border with Mexico, and sobriety checkpoints were limited to the roads. The rationale for the drug checkpoint in *Edmond* could not be constrained. If accepted, the rationale for drug checkpoints would have extended much further than its immediate purpose. Drugs are not tied to the roads, so the checkpoints' rationale would extend to areas where drugs are manufactured or sold. Since illegal drugs are not the only serious crime problem, this rationale would also extend to other serious crimes such as murder or organized crime. Because the drug checkpoint's potential growth threatened the Fourth Amendment, it was struck down.

The informative checkpoint in this case is no threat to the Fourth Amendment. Unlike the drug checkpoint in *Edmond*, it carries its own limits. This checkpoint is limited to one automotive crime, tying it closely to the roads. The officers conducting the checkpoint also had little discretion in setting its time and place. Since the checkpoint's rationale extends only to a relatively small number of serious automotive offenses, there is no threat of its rationale spreading through the Fourth Amendment like the drug checkpoint in *Edmond*.

The minimal intrusiveness of the informative checkpoint further distinguishes this case from *Edmond*. Unlike all prior checkpoint and special needs search cases, this case does not involve an adversarial relationship between the authorities and individuals who are stopped. The police here are not trying to catch drivers committing crimes. Instead, they are simply informing drivers about a fatal accident that took place on the street where they are driving. This is inherently less intrusive than the adversarial checkpoints previously before this Court.

An intrusion can be so minimal as to no longer warrant Fourth Amendment scrutiny. The seizure in this case approaches that point. It was a 10- to 15-second stop that allowed the police to give a leaflet about the accident to drivers. Few stops will be as unintrusive as this, and it is reason enough to distinguish *Edmond* from this case.

This checkpoint is reasonable in light of the balance between public need and private intrusion. The police are attempting to find out from the public about a proven highway menace—someone who kills and leaves the scene of the accident. Since the only two identifiable witnesses are gone, it makes sense to publicize the incident in order to find out what happened. The checkpoint is an efficient, targeted effort to find someone who saw what happened. In light of the checkpoint's minimal intrusion, it is a reasonable effort. The Fourth Amendment requires no more.

ARGUMENT

I. *Edmond* only prevented a checkpoint of potentially universal application.

Checkpoints[2] are a limited, but essential, component of public safety. While the automobile is a great source of freedom and convenience to individuals, it also poses significant public safety concerns. The car's mobility and independence can be a boon to criminals, while its power turns every driver into a potential menace.

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2. The Illinois Supreme Court called the operation a "roadblock." See *People* v. *Lidster*, 779 N. E. 2d 855, 856 (Ill. 2002). This was inaccurate. A roadblock is the complete blocking of a road in order to prevent any traffic from continuing on the path. It is "[a] barricade or an obstruction across a road set up to prevent the escape or passage, as of a fugitive or enemy troops." American Heritage Dictionary 1559 (3d ed. 1992). What was done in this case, *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000), *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444 (1990), or *United States* v. *Martinez-Fuerte*, 428 U. S. 543 (1976) was not a roadblock, as passage through the obstruction was possible after dealing with the authorities. It was a checkpoint. The complete blocking of passage makes a roadblock a more intrusive seizure than a checkpoint. Calling checkpoints "roadblocks," see, *e.g.*, *Ferguson* v. *Charleston*, 532 U. S. 67, 83, n. 21 (2001), inaccurately prejudices them and should be avoided.

These problems give the automobile a special status under the Fourth Amendment. Drunk driving's heavy toll strongly supported the constitutionality of drunk driving checkpoints, see *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444, 451 (1990), and the automobile's aid to illegal immigration helped support illegal alien checkpoints. See *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 552 (1976). The automobile's mobility justifies suspending the warrant requirement when police have probable cause to search a car. See *Carroll* v. *United States*, 267 U. S. 132, 153-154 (1925). Its relative openness and substantial regulation also work to diminish the expectation of privacy of a vehicle's occupants. See *South Dakota* v. *Opperman*, 428 U. S. 364, 368 (1976). These combine to sharply reduce the coverage of the Fourth Amendment in the automobile. For example, one commentator hostile to recent Fourth Amendment automotive decisions has concluded that "it is no exaggeration to say that in cases involving cars, the Fourth Amendment is all but dead." Harris, Car Wars: The Fourth Amendment's Death on the Highway, 66 Geo. Wash. L. Rev. 556, 556 (1998).

This is an exaggeration. Automobile occupants do not lose all expectations of privacy. See *Delaware* v. *Prouse*, 440 U. S. 648, 662 (1979). This was demonstrated when this Court struck down a drug interdiction checkpoint in *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000). While important, *Edmond* is not a landmark break from precedent. Although this decision confirmed that there were limits on the use of checkpoints, *Edmond* is much narrower than the reading given to it by the Illinois Supreme Court.

Analysis of *Edmond* centers on the checkpoint's purpose. The "primary purpose" of the checkpoint in *Edmond* was "the discovery and interdiction of illegal narcotics." *Id.*, at 34. Allowing a "general interest in crime control" to justify a checkpoint posed a grave threat to the Fourth Amendment. Since most searches and seizures are intended to control crime, upholding this rationale for suspicionless seizures "would do

little to prevent such intrusions from becoming a routine part of American life." *Id.*, at 42. "The Fourth Amendment imposes limits on search-and-seizure powers in order to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." *Martinez-Fuerte*, 428 U. S., at 554. For most searches and seizures, the individualized suspicion requirement guards against government arbitrariness. See *New Jersey* v. *T.L.O.*, 469 U. S. 325, 342, n. 8 (1985). Suspicionless checkpoint seizures require something else to limit the government.

In *Martintez-Fuerte*, the special problems presented by illegal immigration created both a need for the checkpoints and an inherent limit on the government's authority to seize drivers and passengers. Policing our long and porous border for illegal aliens presented formidable challenges to the authorities. See 428 U. S., at 552. Automobiles substantially compounded the problem, which made checkpoints an integral part of the Custom Service's efforts to control immigration. See *id.*, at 552-553. Because many of the checkpoints had to be on major traffic arteries, requiring individualized suspicion was impractical in light of the heavy traffic flowing through the checkpoints. See *id.*, at 557. Therefore, the government had a real need for the suspicionless checkpoints.

While these needs helped make the constitutional case for immigration checkpoints, the importance of the public interest is not enough by itself to "justify a regime of suspicionless searches or seizures." *Edmond*, 531 U. S., at 543. It is necessary to "look more closely at the nature of the public interests that such a regime is designed principally to serve." *Ibid.* In *Martinez-Fuerte*, the checkpoint was constitutional because the interest in limiting immigration necessarily limited the spread of similar checkpoints.

The *Martinez-Fuerte* checkpoints were aimed at curbing illegal immigration from Mexico. See 428 U. S., at 552. This focus was rational since Mexico was estimated to be the source of 85% of all illegal immigration, see *id.*, at 551, and our long

southern border with Mexico made automobiles an ideal means of unauthorized entry. Therefore, immigration checkpoints were necessarily limited to a relative handful of strategic areas near our southern border with Mexico. See *id.*, at 552. It would make no sense to set up checkpoints for illegal immigrants from Mexico in places like Nebraska, Hawaii, New York, or Florida.

Because immigration checkpoints could not spread throughout the country unabated, the overall intrusiveness of the regime was minimized. While one or two checkpoints may not be too intrusive, the cost to privacy rises rapidly as they become widespread. A checkpoint capable of universal application also runs the risk of arbitrary placement. Since police do not have unlimited resources to conduct checkpoints, some choice is necessary for their placement. Although "neutral criteria" for the timing and placement of searches and seizures reduces this risk, see *Marshall* v. *Barlows, Inc.*, 436 U. S. 307, 323 (1978), neutral criteria may be impossible to develop when the problem addressed by the checkpoint is sufficiently pervasive. The narrow focus of the checkpoint in *Martinez-Fuerte* prevents this and distinguishes it from *Edmond*.

What most concerned the *Edmond* Court was the potentially unlimited application of drug checkpoints. This fact is key to understanding that case and why narcotics checkpoints differ from other valid checkpoints. There is a superficial similarity between *Edmond* and the checkpoints upheld by this Court. The two valid checkpoints both prevented crime—illegal immigration and drunk driving. See *Edmond*, 531 U. S., at 42. The problem is that leaving the analysis at this level of generality would eviscerate the Fourth Amendment. See *ibid.*

Since drugs are a problem everywhere, upholding drug checkpoints would allow the police to establish them wherever and whenever they chose. "Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life."

Edmond, 531 U. S., at 42. The general rule is that searches and seizures must be supported by individualized suspicion. Suspicionless intrusions such as checkpoints or "special needs" searches are an exception to this rule. See *Ferguson* v. *Charleston*, 532 U. S. 67, 81 (2001). The broad purpose of drug checkpoints would turn the exception into the rule.

The other checkpoint upheld by this Court, the drunk driving checkpoint of *Sitz*, is not as easily compatible with *Edmond* as immigration checkpoints. Drunk driving is a national problem. See *Sitz*, 496 U. S., at 451. For example, arrests for driving under the influence almost equal the arrests for drug abuse violations. See U. S. Dept. of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics 2001, Table 4.1, p. 342 (2002). Therefore, the geographical controls found in *Martinez-Fuerte* are not as pronounced in *Sitz*. After *Sitz*, a drunk driving checkpoint can be set up on almost any highway.

Edmond distinguished *Sitz* on the basis of the sobriety checkpoint's close tie to the roads. Driving under the influence is closely connected to the highways and streets. "Only with respect to a smaller class of offenses, however, is society confronted with the type of immediate, vehicle-bound threat to life and limb that the sobriety checkpoint in *Sitz* was designed to eliminate." *Edmond*, 531 U. S., at 43. Narcotics offenses lacked this connection, which distinguished *Edmond* from *Sitz*. See *ibid.* While sobriety checkpoints were tied to the road through drunk driving, narcotics checkpoints lacked any effective limits. The *Edmond* Court's rationale for distinguishing *Sitz* shows that *Edmond* is a limited decision. While sobriety checkpoints were capable of wide application, that alone did not justify their invalidation under *Edmond*. What distinguished *Sitz* from *Edmond* is the greater threat to the Fourth Amendment posed by the narcotics checkpoints. It is this threat that lead to narcotics checkpoints being *per se* invalid.

The problem with the narcotics checkpoint is that its rationale cannot be confined to the roads or to narcotics. Ships, trains, airplanes, bicycles, and feet are all used to transport drugs. Had *Edmond* been decided the other way, then suspicionless seizures in these contexts would be equally valid.

Transportation is only one part of the drug problem. Since drugs are not tied to the roads, the checkpoint's rationale could apply to procedures designed to combat the manufacturing, sale, or use of narcotics in buildings, street corners, private residences, or anywhere else. There is no drug exception to the Fourth Amendment. Cf. *Richards* v. *Wisconsin*, 520 U. S. 385, 393-394 (1997) (rejecting a drug exception to the knock and announce requirement). The checkpoint rejected in *Edmond* threatened to create one.

The risk to the Fourth Amendment in *Edmond* did not stop at drugs. Murder, rape, organized crime, and child abuse are among the many serious problems covered by criminal law. If drugs could justify suspicionless seizures, then so could these or other similarly serious criminal problems. The rationale of the narcotics checkpoint, if accepted, threatened to swallow much of the Fourth Amendment. This is why a "primary purpose . . . to advance 'the general interest in crime control,' " *Edmond*, 531 U. S., at 44 (quoting *Prouse*, 440 U. S., at 659, n. 18), was constitutionally unacceptable.

The *Edmond* Court did not categorically exclude crime control interests from justifying roadblocks or checkpoints. Certain emergencies, such as an "imminent terrorist attack" or a "dangerous criminal" fleeing "by way of a particular route" are crime control interests that could constitutionally justify a roadblock. See 531 U. S., at 44. However, even these must be "appropriately tailored," *ibid.*, to ensure that there are constraints on the government's ability to conduct suspicionless searches or seizures.

Edmond is about limits. A checkpoint that does not suggest its own limits is unlikely to withstand scrutiny. As *Edmond*

demonstrated, it is necessary to get underneath the surface of the checkpoint's primary purpose in order to make this determination. Simply labeling an interest as general crime control and striking the checkpoint down without further analysis is a "substitution of words for analysis." *United States* v. *White*, 401 U. S. 745, 786 (1971) (Harlan, J., dissenting). Unfortunately, this was the extent of the Illinois Supreme Court's reasoning. Closer examination of the checkpoint in this case finds something much more limited than the threat to devour the Fourth Amendment that was struck down in *Edmond*.

II. The limited purpose and minimal intrusion of the informative checkpoint in this case distinguishes it from *Edmond*.

A. Intent.

Accurate analysis of the checkpoint in this case begins by understanding what happened on August 30, 1997, on North Avenue in Lombard, Illinois. The police conducted an informative checkpoint. Its purpose was to inform motorists of a specific hit and run homicide that took place on the same street one week ago in order to get leads on the perpetrator. This checkpoint was no different than officers asking the community for information through the newspapers, television, or door-to-door canvassing.

The informative checkpoint in this case is unique among the suspicionless search or seizure cases before this Court. All three checkpoint cases involved attempts to find evidence of criminality from the stopped motorists, or to deter people from using vehicles to commit crimes. See *City of Indianapolis* v. *Edmond*, 531 U. S. 32, 34 (2000) (illegal narcotics); *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444, 447 (1990) (drunk driving); *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 543 (1976) (illegal immigration). Special needs searches are similar. Sometimes the search is intended to find criminal evidence from the target of the search. See *Griffin* v. *Wiscon-*

sin, 483 U. S. 868, 870 (1987) (probation search). While the results of other special needs searches are not turned over to the police, the searches have adverse consequences for those being searched. See, *e.g.*, *Board of Education* v. *Earls*, 536 U. S. 822, 833 (2002) (failing drug test limits middle and high school students' ability to participate in extracurricular activities); *Vernonia School Dist. 47J* v. *Acton*, 515 U. S. 646, 651 (1995) (possible suspension from school sports for positive drug test); *National Treasury Employees Union* v. *Von Raab*, 489 U. S. 656, 661 (1989) (loss of promotion of position transfer for drug test failure); *Skinner* v. *Railway Labor Executives' Assn.*, 489 U. S. 602, 611 (1989) (results of breath or urine tests may be used in disciplinary proceedings against the tested railroad employees). The special needs searches struck down under the Fourth Amendment also involved potentially adverse consequences for those searched. See *Ferguson* v. *Charleston*, 532 U. S. 67, 72-73 (2001) (possible use of drug tests of pregnant women in criminal prosecutions); *Chandler* v. *Miller*, 520 U. S. 305, 309 (1997) (positive drug test disqualifies candidate for public office). Administrative searches are similarly adverse for their subjects. See, *e.g.*, *New York* v. *Burger*, 482 U. S. 691, 694-696 (1987) (criminal prosecution from fruits of administrative search).

The checkpoint in this case has a different position with respect to its subjects. No adverse consequences were intended for anyone going through the checkpoint. The officers did not ask for license, registration, or other identifying information from the drivers. See *supra*, at 2. Nor did they question the drivers or make a visual inspection of the vehicles' interiors. If the perpetrator of the hit and run drove through the checkpoint, the officers would not be able to find this out absent a spontaneous confession. The defendant in this case was arrested for drunk driving for reasons unrelated to the purpose of the checkpoint. Nearly hitting an officer with a vehicle during the slowed traffic of a checkpoint can only raise a justifiable suspicion that something is wrong with the driver.

Had Lidster not driven so badly, his intoxication would have remained undiscovered.[3]

The unique context of the informative checkpoint is important for two reasons. First, the nonadversarial nature of the stop diminishes the invasion of privacy. The means needed to inform citizens in this case are less invasive than those used to ferret out drug dealers, a topic discussed later. See Part II-B, *infra*. Informative stops are simply inherently less invasive than adversarial checkpoints.

Secondly, the informative checkpoint's purpose limits its potential scope. It was intended to find eyewitnesses to a single highway crime. The most logical place to find eyewitnesses to the accident is on the street on which it happened. Its timing is as constrained as its location. Conducting the checkpoint at the same time and day of the week as the incident maximizes the chance of finding a motorist who was driving near the accident as part of his or her regular commute from work. See *supra*, at 2. Since people can have different driving patterns for each day of the week, it made sense to conduct the checkpoint on the same day of the week that the accident happened. Once the police decided to establish the checkpoint, there was little discretion as to when or where it would take place, thus achieving a key purpose of the Fourth Amendment. See *Delaware* v. *Prouse*, 440 U. S. 648, 653-654 (1979) ("The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials").

Although the checkpoint was set up to solve a crime, it does not carry the danger to the Fourth Amendment found in the general crime control interest of *Edmond*. First, this checkpoint

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3. Because Lidster's bad driving provided a basis of individualized suspicion prior to his actual stopping, there may have not been a suspicionless seizure in this case. See *California* v. *Hodari D.*, 499 U. S. 621, 629 (1991). However, the state did not petition for certiorari on this point.

is focused on a traffic crime, tying it to the roads. This closely parallels what distinguishes the constitutionally acceptable drunk driving checkpoint from the unconstitutional narcotics checkpoint. *Edmond* distinguished the interest in apprehending drunk drivers in *Sitz* from a general interest in crime control by the sobriety checkpoint's close connection to highway safety. See *Edmond*, 531 U. S., at 43 ("immediate, vehicle-bound threat to life and limb"). The person sought in the present case had already killed someone on the highway, demonstrating a clear and present danger to motorists and pedestrians. That driver's lack of responsibility in leaving the scene compounded the threat.

This Court has recognized that it may be possible to obstruct a road in order to apprehend a felon. Dicta in *Edmond* stated that police may block a particular route in order to catch a fleeing dangerous criminal. See 531 U. S., at 44. In *Brower* v. *County of Inyo*, 489 U. S. 593, 599 (1989), this Court left open whether a roadblock that led to the death of the fleeing criminal violated the Fourth Amendment. A sufficient criminal law interest should allow the authorities to restrict traffic in order to catch a criminal.

> "If we assume, for example, that a child is kidnaped and the officers throw a roadblock about the neighborhood and search every outgoing car, it would be a drastic and undiscriminating use of the search. The officers might be unable to show probable cause for searching any particular car. However, I should candidly strive hard to sustain such an action, executed fairly and in good faith, because it might be reasonable to subject travelers to that indignity if it was the only way to save a threatened life and detect a vicious crime. But I should not strain to sustain such a roadblock and universal search to salvage a few bottles of bourbon and catch a bootlegger." *Brinegar* v. *United States*, 338 U. S. 160, 183 (1949) (Jackson, J., dissenting).

While the exigency is less in this case, so is the intrusion. *Amicus* is not asking that the police be allowed to block a road

and search motorists at will. When there is a serious accident, an informative stop may be reasonable after the appropriate Fourth Amendment interests are balanced. See Part III, *infra*.

The Illinois Supreme Court tried to rationalize its holding with a slippery slope argument:

> "Should the police have been allowed to set up roadblocks to obtain information from potential witnesses for each murder? What of a robbery, an aggravated criminal sexual assault, an arson or any other serious crime? According to the State, for a period of at least a week after each crime, police could set up roadblocks with the specific purpose of making inquiries of persons who were possibly witnesses to a crime. The troubling specter then arises that the streets of Cook County, or at least the streets of Chicago, would be adorned with roadblocks, an outcome clearly unacceptable under *Edmond*." *People* v. *Lidster*, 779 N. E. 2d 855, 860 (Ill. 2002).

This substitutes hyperbole for analysis. The checkpoint was set up to find information about an automotive homicide. Although automobiles are a significant source of criminal conduct, the vast majority of serious crimes are not automobile related. The crimes of "robbery . . . aggravated criminal sexual assault [or] arson," see *ibid.*, are unlikely to be committed on the road with a vehicle. Crimes involving automobiles are most likely to be violations of hit and run regulations, collisions leading to homicide or assault charges, vehicle theft, flight from some other offense, transporting contraband or illegal immigrants, driving under the influence, or misdemeanor traffic offenses like reckless driving. Two of these crimes, driving under the influence and transporting illegal immigrants, can support checkpoints, while transporting contraband cannot. Of the remainder, traffic offenses and motor vehicle thefts are not serious enough to warrant a checkpoint, while certain fleeing felons can be stopped with checkpoints or roadblocks. Only hit and run, vehicular homicides, or serious assaults with vehicles are implicated by the informative checkpoint in this case.

The Illinois Supreme Court's slippery slope argument also imperils *Sitz*, as drunk driving checkpoints can be established throughout the country. See *supra*, at 9. What distinguishes *Sitz* from *Edmond* is the sobriety checkpoint's close tie to the road, see *supra*, at 9, the same feature that is present in this case.

The checkpoint's focus on a narrow band of automotive crime will keep it from consuming the Fourth Amendment. It is focused on a particular area, a particular time, and on a small, discrete set of criminal activity. This is a far cry from what the *Edmond* decision sought to stop.

B. Less Intrusive.

The minimal intrusion of the seizure in this informative checkpoint also distinguishes it from *Edmond*. *Edmond* did not involve a search, see 531 U. S., at 40, but the level of intrusion was significant when compared to the present case. A "sniff by a dog that simply walks around a car [may be] 'less intrusive than a typical search,' " *ibid.* (quoting *United States* v. *Place*, 462 U. S. 696, 707 (1983)), but it is still an effort to find evidence of criminality from a motorist rather than give him or her a leaflet about a fatal accident. In *Place*, the dog sniff came after a stop supported by reasonable suspicion. See 462 U. S., at 706. The issue was whether the sniff had to be supported by probable cause. See *ibid.* Holding that it was not a search requiring probable cause, this Court recognized that there was some intrusion, but that it fell short of a search.

> "Thus, the manner in which information is obtained through this investigative technique is much less intrusive than a typical search. Moreover, the sniff discloses only the presence or absence of narcotics, a contraband item. Thus, despite the fact that the sniff tells the authorities something about the contents of the luggage, the information obtained is limited. This limited disclosure also ensures that the owner of the property is not subjected to the embarrassment and inconvenience entailed in less discriminate and more intrusive investigative methods." *Id.*, at 707.

This holding is correct. Canine sniffs should not warrant extra justification under the Fourth Amendment if the stop that makes the sniff possible is already constitutional. However, the sniff in *Edmond* involves some intrusion that does not exist in this case.

Seizures vary in the degree of privacy they invade. Some seizures involve a total invasion of physical privacy—the death of the suspect, see, *e.g.*, *Brower*, 489 U. S., at 594; *Tennessee* v. *Garner*, 471 U. S. 1, 3 (1985), while others are much less physically intrusive. See, *e.g.*, *Terry* v. *Ohio*, 392 U. S. 1 (1968). Seizures also vary by how much they invade the individual's feelings of privacy or security. Checkpoints have a more secure Fourth Amendment foundation than roving stops because checkpoints generate apprehension in motorists due to the checkpoint's public display of authority and its application to all motorists. See *Prouse*, 440 U. S., at 657.

The informative checkpoint causes even less consternation than immigration, drug, or drunk driving checkpoints. Drivers subject to the informative checkpoint are not examined for evidence that they are drunk, harboring illegal aliens, or carrying illegal drugs. The fact that they are instead informed about a fatal accident on this highway and given the opportunity to help solve an unsolved crime can only further minimize the apprehension and frustration that comes with a traffic stop.

The seizure in this case lasts no more than 15 seconds, see *supra*, at 2, noticeably less than the two- to three-minute average in *Edmond*. See 531 U. S., at 36. This difference is a result of all the information that the drug checkpoint sought to extract from innocent drivers. In addition to the canine sniff, the narcotics stop also involved request for license and registration, and an open air examination of the vehicle. See *id.*, at 35. Simply handing out leaflets will take much less time and involve much less inconvenience for the drivers.

In all prior checkpoint, special needs search, and administrative search decisions there was some adversity between the individual and those conducting the stop or search. See *supra*, at 11-12. They all involved some effort to determine whether the stopped or searched individuals were violating the law or official policy. Those subject to the intrusion knew that they were being probed for evidence that they had done something wrong. See, *e.g.*, *Edmond*, 531 U. S., at 35 (motorist informed that he or she is being stopped at a drug checkpoint). Even so, this type of intrusion could be labeled "minimal" in an appropriate case. See *Sitz*, 496 U. S., at 452. In *Sitz*, drivers were detained for about 25 seconds and checked for evidence of intoxication. See *id.*, at 447-448. If the *Sitz* intrusion is minimal, then the 10- to 15-second, nonadversarial checkpoint in the present case is less than minimal.

Stops of this brevity are commonplace on the highways. Drivers routinely make stops of this duration at traffic lights and stop signs. These traffic controls fit the definition of seizure, terminating an individual's freedom of movement through an intentionally applied show of authority. See *California* v. *Hodari D.*, 499 U. S. 621, 626 (1991). The public safety interest in regulating intersections and the minimal intrusiveness of the stops ensures that the Fourth Amendment is satisfied. The present checkpoint is a slightly more elaborate version of the same intrusion. Although it does not have the pervasive safety purpose of traffic controls, the informative checkpoint has its own internal safety measures that check its potential growth. See Part II-A, *supra*.

A seizure can be too minimal to warrant Fourth Amendment protections. For example, testing a trace amount of a substance to determine whether it is cocaine destroys the substance. This permanent deprivation of private property is a seizure that is separate from the initial seizure of the substance. See *United States* v. *Jacobsen*, 466 U. S. 109, 124-125 (1984). If the property is already lawfully detained, then the destruction of a minimal portion of it for testing survives Fourth Amend-

ment scrutiny. See *id.*, at 123. "Under these circumstances, the safeguards of a warrant would only minimally advance Fourth Amendment interests." *Id.*, at 125.

The Fourth Amendment operates on a continuum, with the greatest intrusions warranting the most protection. Searches typically require a warrant, see *New York* v. *Burger*, 482 U. S. 691, 702 (1987), while arrests require probable cause. See *Atwater* v. *City of Lago Vista*, 532 U. S. 318, 354 (2001). The lesser intrusion of the stop and frisk requires reasonable suspicion. See *Terry* v. *Ohio*, 392 U. S. 1 (1968). Searches can overcome the warrant and probable cause standard if there is a special need, see *Board of Education* v. *Earls*, 536 U. S. 822, 829 (2002), while an appropriate government interest will support a highway checkpoint after "a balancing of the competing interests at stake and the effectiveness of the program." *Edmond*, 531 U. S., at 47.

The present case is at the far end of that continuum. The minimal, nonadversarial intrusion makes for a less difficult experience than submitting to a sobriety, immigration, or narcotics checkpoint. This minor stop should not be treated like the more extensive seizures of the other checkpoints. While its purpose is sufficient to distinguish it from *Edmond*, even without this feature the reduced intrusion of the informative checkpoint also separates it from drug checkpoints.

III. This informational checkpoint was reasonable and therefore complied with the Fourth Amendment.

Successfully distinguishing *City of Indianapolis* v. *Edmond*, 531 U. S. 32 (2000), see Part II, *supra*, does not end the analysis. *Edmond* relied on the improper purpose of the drug checkpoint to bypass the normal procedure for analyzing seizures that fall short of an arrest. "The reasonableness of seizures that are less intrusive than a traditional arrest [citations], depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary

interference by law officers.' " *Brown* v. *Texas*, 443 U. S. 47, 50 (1979) (quoting *Pennsylvania* v. *Mimms*, 434 U. S. 106, 109 (1977)). This standard applies to automotive checkpoints, see *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444, 450 (1990), so long as they are not motivated by an improper purpose. See *Edmond*, 531 U. S., at 47. The Illinois Supreme Court's holding that *Edmond* is indistinguishable from the present case made a reasonableness analysis unnecessary for its opinion. See *People* v. *Lidster*, 779 N. E. 2d 855, 861 (2002) (citing *Edmond*).

Brown provides the standard for testing the constitutionality of a seizure short of an arrest. "Consideration of the constitutionality of such seizures involves a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." 443 U. S., at 50-51. The "central concern" of the balancing test is "to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." *Id.*, at 51. The informative checkpoint readily satisfies these concerns. Checkpoints inherently limit an officer's opportunity to exercise discretion in an arbitrary manner. See *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 559 (1976). The purpose behind the informative checkpoint also limits the discretion of the police in a way that was absent in narcotics checkpoints. See Part II-A, *supra*.

The interest advanced by the checkpoint is substantial. This Court has already approved a checkpoint designed to catch or deter drunk drivers. See *Sitz*, 496 U. S., at 455. While drunk driving is a serious threat to public safety, see *id.*, at 451, it is also true that no one is directly harmed by the act of driving while intoxicated. People frequently drive while intoxicated without harming themselves or others. Thus in 2000, there were 1,471,289 arrests for driving under the influence, while the total arrests for all serious violent crimes was 625,132. See U. S. Dept. of Justice, Bureau of Justice Statistics, Sourcebook

of Criminal Justice Statistics 2001, Table 4.1, p. 342 (2002). The problem with drunk driving is the socially unacceptable risk of death or injury that accompanies intoxicated driving. This checkpoint does not address merely potentially dangerous drivers. It addresses a proven menace to road safety—someone involved in a fatal accident who left the scene of the incident.

Although the informative checkpoint is only meant to apprehend one danger, and the *Sitz* checkpoint could apprehend more, see *Sitz*, 496 U. S., 448 (two arrests), this does not invalidate the present checkpoint. Each checkpoint must be analyzed on its own facts. The *Sitz* checkpoint had a greater potential for abuse and driver inconvenience, due to its nationwide scope. See *supra*, at 9. By comparison, the officers in this case had little discretion in the timing or placement of the informative checkpoint. See *supra*, at 13.

The second aspect of the *Brown* test, the checkpoint's efficiency in advancing the public interest, is not an invitation to second-guess police practice. "This passage from *Brown* was not meant to transfer from politically accountable officials to the courts the decision as to which among reasonable alternative law enforcement techniques should be employed to deal with a serious public danger." *Id.*, at 453. The Fourth Amendment does not have a least intrusive means requirement. See *Vernonia School Dist. 47J* v. *Acton*, 515 U. S. 646, 663 (1995). Police only need to employ reasonable means in order to satisfy the Fourth Amendment.

An informative checkpoint is appropriate to the difficult problem posed by a fatal hit and run accident. The two best witnesses to the accident, the driver and the victim, are missing. Unlike a human who leaves DNA evidence or a fingerprint, an automobile is unlikely to leave similar identifying evidence unless a license plate falls off during the accident. Since the killing took place on a street, drivers at the time of the accident are the best source of potential eyewitnesses. While some of these potential eyewitnesses might live nearby, there is every reason to believe that most had no ties to the area other than

using the road where the accident occurred. The accident occurred near the time of a local commute. See *supra*, at 13. Also, the fact that one drives on a particular road is no guarantee that he or she lives near that street. Therefore, a door-to-door canvassing of the immediate area could only be marginally useful.

Publicity is the best solution. With enough publicity, an eyewitness to some part of the accident might have his or her memory jogged enough to come forward with relevant information. There are several sources of publicity—appeals to the public through the mass media, the internet, billboards, posting flyers on lampposts or other fixtures, and the informational checkpoint used in this case. Mass media appeals are cheap and widespread, but the police lack control over the content of the appeal, and it is contingent on the cooperation of local editors and publishers. The internet is cheap, but unlikely to reach actual witnesses. Advertisements are expensive and may be ignored, while posting flyers on fixtures are unlikely to reach many people. The checkpoint is not too expensive, and unlike any other means of communication, is targeted at the most fertile source of potential witnesses.

When balanced against the minimal intrusion of the stop, see Part II-B, *supra*, the informational checkpoint in this case is reasonable. It is an efficient way of trying to deal with a deadly driver, and it may be the only way for the victim's family to secure compensation for their loss. Nor does it pose the threat to the Fourth Amendment found in the drug checkpoint. Requiring a warrant or individualized suspicion would frustrate police efforts to inform the community, while doing little to protect individual privacy. This limited, focused attempt to inform the local population of a serious offense is reasonable. The Fourth Amendment requires no more.

CONCLUSION

The decision of the Illinois Supreme Court should be reversed.

July, 2003

Respectfully submitted,

CHARLES L. HOBSON

Attorney for Amicus Curiae
Criminal Justice Legal Foundation

Supreme Court, U.S.
FILED
JUL 3 2003
OFFICE OF THE CLERK

No. 02-1060

In the Supreme Court of the United States

ILLINOIS, PETITIONER,

v.

ROBERT S. LIDSTER, RESPONDENT.

On Writ of Certiorari to the Supreme Court of Illinois

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 9, 2003
CERTIORARI GRANTED MAY 5, 2003

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RELEVANT DOCKET ENTRIES NOT INCLUDED

The following opinions have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition for a Writ of Certiorari:

People v. Lidster, 202 Ill.2d 1,
779 N.E.2d 855 (2002) 1a-22a

People v. Lidster, 319 Ill.App.3d 825,
747 N.E.2d 419 (2d Dist. 2001) 23a-28a

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT, DU PAGE COUNTY, ILLINOIS

The People of the State of Illinois

v.

Robert S. Lidster

No. 97 DT 3462

RELEVANT DOCKET ENTRIES

09/02/97	Complaint charging Defendant, Robert S. Lidster, with driving under the influence of alcohol.
11/17/97	Entry of Appearance of counsel, Michael W. Fleming, for Defendant.
9/22/98	Motion of Michael W. Fleming to Withdraw as Attorney of Record.
9/22/98	Order appointing Public Defender to represent Defendant.
4/20/99	Motion to Quash Arrest and Suppress Evidence.
6/4/99	Hearing on Defendant's Motion to Quash Arrest and Suppress Evidence. Motion denied.
9/27/99	Waiver of Trial by Jury. Trial held. Court finds Defendant guilty of driving under the influence of alcohol.

10/13/99	Motion to Reconsider the Court's Finding of Guilty, or in the Alternative, Motion for a New Trial.
11/15/99	Sentencing Hearing held. Sentence of Defendant ordered.
11/17/99	Notice of Appeal.
11/29/99	Amended Notice of Appeal.
5/14/01	Order vacating the court's finding of guilty and Defendant's conviction and sentence.

IN THE APPELLATE COURT OF ILLINOIS,
SECOND DISTRICT

The People of the State of Illinois

v.

Robert S. Lidster

No. 2-99-1288

RELEVANT DOCKET ENTRIES

03/30/01	Opinion of the Appellate Court of Illinois, Second District.
04/24/01	Order Denying Rehearing.

IN THE SUPREME COURT OF ILLINOIS

The People of the State of Illinois

v.

Robert S. Lidster

No. 91522

RELEVANT DOCKET ENTRIES

10/18/02 Opinion of the Supreme Court of Illinois.

AVC:ldj 4/12/99

STATE OF ILLINOIS)
) SS:
COUNTY OF DU PAGE)

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, DU PAGE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
PLAINTIFF,	)	
VS.	)	No. 97 DT 3462
ROBERT S. LIDSTER,	)	
DEFENDANT.	)	

MOTION TO QUASH ARREST AND SUPPRESS EVIDENCE

Now comes the defendant, ROBERT LIDSTER, by and through his attorney, STEPHEN W. BAKER, Public Defender for DuPage County, by his assistant, ANTHONY V. COCO and moves this Honorable Court to quash the arrest and suppress from the introduction into evidence the direct and indirect products of said arrest and traffic stop of the automobile which the defendant was driving.

IN SUPPORT THEREOF, THE DEFENDANT STATES AS FOLLOWS:

1. That the defendant, ROBERT LIDSTER, is a citizen of the United States and State of Illinois and is entitled to all guarantees with respect to the Federal Constitution and the Illinois Constitution.

2. That on the 30th day of August, 1998, a police officer of the Lombard Police Department, stopped the defendant while he was driving an automobile on a public highway in DuPage County, Illinois, pursuant to a traffic roadblock and that this officer thereafter arrested the defendant.

3. That prior to said traffic stop the arresting police officer had no warrant for the defendant, nor any reason to believe that any warrant had been issued, nor a search warrant of any kind, nor any probable cause to believe that the defendant was committing or had committed any offense, nor a reasonable and articulable suspicion that the defendant had violated any law.

4. That the alleged purpose of the roadblock and traffic stop was to investigate a fatal hit and run accident that had occurred one week prior, the perpetrator having been alleged to have driven a 1980-1986 Ford "Full size" Pickup or Bronco. (See Exhibit A.)

5. That in their quest to locate said perpetrator, the Lombard Police Department chose to stop **every single car** traveling eastbound and westbound on North Avenue at Craig Street between the hours of 11:00 p.m. - 2:00 p.m.

6. That when seized, the defendant was driving a Mazda Minivan.

7. That the aforesaid traffic stop of the defendant and the automobile he was driving was a seizure as contemplated by the Fourth Amendment to the United States Constitution and

was made without probable cause, and without reasonable and articulable suspicion that the defendant had violated a law.

8. That a police officer's stopping of a motorist without at least articulable and reasonable suspicion that the motorist, an occupant, or the vehicle is subject to seizure for violation of a law, is unreasonable under the Fourth Amendment to the United States Constitution. *Delaware v. Prouse*, 440 U.S. 648, 9 S.Ct. 1391, 59 L.Ed.2d 660 (1979).

9. The Fourth Amendment to the United States Constitution guarantees the right of persons to be secure from unreasonable search and seizure of their persons, house, papers and effects.

10. The Exclusionary Rule prohibits the introduction into evidence of the direct and indirect products of unreasonable searches and seizures. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); *Wong Sun v. U.S.*, 371 U.S. 471, 9 L.Ed.2d 441 (1963).

11. As a result of the aforesaid traffic detention, the prosecution has acquired knowledge that it intends to employ in the prosecution of this cause.

WHEREFORE, the defendant respectfully moves this Honorable Court to quash his arrest, due to the absence of authority, or probable cause or articulable and reasonable suspicion by the police officer to detain the defendant, and to suppress from introduction into evidence the following:

A. Physical evidence discovered directly and indirectly as a result of the aforesaid traffic stop, arrest and detention;

B. Statements, utterances, reports of gestures, observations and responses by the defendant subsequent to the traffic detention;

C. Witnesses who viewed the defendant subsequent to said traffic detention, during the detention, as well as witnesses discovered as a result of said traffic stop provided that the defendant has the right to call said witnesses for the purpose of protecting his constitutional rights;

D. Photographs, fingerprints, and other information, the product of the processing of defendant following his said traffic stop and his arrest; and the fruits thereof;

E. All other knowledge and fruits thereof, witnesses, statements, whether written, oral or gestural and physical evidence which is the direct and indirect product of said traffic stop.

Respectfully submitted,

STEPHEN W. BAKER
Public Defender for DuPage County

By: /s/ Anthony V. Coco

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LOMBARD POLICE
630-620-5955

ALERT

FATAL HIT & RUN ACCIDENT

THE LOMBARD POLICE ARE LOOKING FOR ASSISTANCE IN IDENTIFYING THE VEHICLE AND DRIVER INVOLVED IN THIS ACCIDENT WHICH KILLED A 70 YEAR OLD BICYCLIST. THE ACCIDENT OCCURRED ON

SATURDAY MORNING AUGUST 23RD

12:15 AM (15 MINUTES AFTER MIDNIGHT)

SUSPECT VEHICLE

1980 - 1986

FORD "FULL SIZE" PICK-UP or

FORD BRONCO

DAMAGE: RIGHT FRONT HEADLIGHT AREA.

MISSING DUE TO THE ACCIDENT IS THE HEADLIGHT/TURN SIGNAL HOUSING UNIT.

anyone with information about the car or driver, or who may have witnessed the accident please call the Lombard police at (630) 620-5955

calls will be kept confidential upon request

(Exhibit A)

STATE OF ILLINOIS)
) SS:
COUNTY OF DU PAGE)

IN THE CIRCUIT COURT OF DU PAGE COUNTY
FOR THE EIGHTEENTH JUDICIAL CIRCUIT
OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,)
PLAINTIFF,)
)
VS.) No. 97 DT 3462
)
ROBERT S. LIDSTER,)
)
DEFENDANT.)

REPORT OF PROCEEDINGS taken at the hearing of the above-entitled cause, before the Honorable MARK W. DWYER, and/or the Honorable STEPHEN J. CULLITON, JUDGES of said Court, on Friday, the 6th [sic] [4th]day of June, A.D. 1999, at the hour of 9:30 o'clock A.M.

PRESENT:

MR. JOSEPH E. BIRKETT, STATE'S ATTORNEY

OF DU PAGE COUNTY, ILLINOIS,

BY

MS. ELIZABETH EKL,

Assistant State's Attorney,

AND

MR. LIAM BRENNAN,

Assistant State's Attorney,
appeared on behalf of The People of
the State of Illinois.

84-12

VIRGINETTE GOODALIS

OFFICIAL COURT REPORTER

DU PAGE COUNTY, ILLINOIS

PRESENT:

MR. ANTHONY V. COCO,

AND

MS. JULIE ANNE DI CARO,

appeared on behalf of the Defendant.

ALSO PRESENT:

MR. ROBERT S. LIDSTER, DEFENDANT.

INDEX

Witness	Direct	Cross	Redirect
Detective Ray Vasil	[J.A. 14]	[J.A. 23]	[J.A. 28]

EXHIBITS

Description	Marked for Identification	Admitted
Flyer	#1 [J.A. 16]	(not admitted)
Lombard Police Department General Order re: Roadblocks	#2 [J.A. 21]	(not admitted)

THE DEPUTY: Remain seated. Come to order. Court is in session

THE CLERK: Robert Lidster.

DEFENDANT LIDSTER: Here.

THE COURT: Do you have the Public Defender, sir?

DEFENDANT LIDSTER: Yes, I do.

THE COURT: Have a seat.

(Whereupon other Court business was conducted, after which the following proceedings were had herein:)

THE COURT: Mr. Public Defender, do you represent Robert Lidster?

MR. COCO: Yes, I do.

THE COURT: Are you answering ready for trial then?

MR. COCO: Yes, we are, Judge. It's a motion.

THE COURT: It's a motion to do what?

MR. COCO: It's a motion to suppress. It's not a trial, your Honor.

THE COURT: Are you ready this morning?

MS. EKL: Yes, Judge.

MR. COCO: Just to let the State's Attorney know, one of her officers just had to walk out to go to the Grand Jury. He said he would come back as soon as he could.

MR. COCO: Lidster.

THE COURT: Are you ready to go?

MR. COCO: Yes, your Honor, we are. We would be making a motion to exclude witnesses.

Your Honor, you should already have the case of People V. Adams which I submitted on a previous motion to reconsider but if not, I have an extra copy.

DEFENDANT LIDSTER: Good morning, your Honor.

THE COURT: Good morning, sir.

This was the Lombard –

MR. COCO: Roadblock.

THE COURT: – safety check? Okay. Who is your first witness?

MR. COCO: Your Honor, I call Detective Vasil. I don't know if you want to do it at the Bench?

THE COURT: Sure. Officer, please raise your right hand and be sworn.

(Witness sworn.)

THE COURT: Have a seat, please.

Go ahead, Mr. Coco.

MR. COCO: Thank you.

RAY VASIL,

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COCO

Q Could you please state your name and spell your last name for the court reporter?

A Ray Vasil, V-a-s-i-l.

Q You are a detective with the Lombard Police Department?

A Yes, I am.

Q You were employed and on duty on August 30th, 1997?

A Yes, I was.

Q What were the nature of your duties at that time?

A We were doing an informative stop on North Avenue trying to work out a fatal hit-and-run accident.

Q I am sorry. I didn't hear you. What kind of a stop?

A Informative stop.

Q What is an informative stop?

A We were passing out a flyer and asking passerbys if they had witnessed anything at a similar time the previous Friday.

Q And can you describe what happened on the previous Friday?

A A gentleman riding his bicycle eastbound on the south side of North Avenue was struck by a vehicle and killed.

Q Okay. Did you then put out some type of interoffice memo concerning that incident?

A Not an interoffice memo to my recollection.

Q Okay. Was there some type of alert; fatal hit-and-run accident?

A There was a flyer that we were passing out to vehicles on North Avenue that following week.

Q Okay. You are talking about the night in question that you were passing out those flyers?

A The week after – the same day of the week for the following week.

Q Okay. Just so we are clear. The hit-and-run accident occurred on the week earlier prior to this roadblock?

A That's correct.

Q And the same day of the week approximately the same time?

A Yes.

MR. COCO: Your Honor, may I approach the witness?

THE COURT: Sure.

MR. COCO: Let the record show I am showing Detective Vasil what I have marked as Exhibit 1.

BY MR. COCO:

Q Do you recognize Exhibit 1?

A Yes.

Q What is that?

A This is the flyer we were handing out.

Q This is concerning the fatal hit-and-run accident that happened on Saturday morning, August 23rd?

A Yes.

Q Now, according to this flyer you were looking for a Ford full-size pickup or Ford Bronco, correct?

A That is what we believed to be the vehicle, yes.

Q So is it fair to say that on August 30th to the best of your knowledge at that time the offending vehicle of the hit-and-run was a full-sized pickup or Ford Bronco?

A Yes.

MR. BRENNAN: Objection. Speculation.

THE COURT: The question can stand.

BY MR. COCO:

Q Who made this decision to set up this roadblock?

A I am snot [sic] sure who made the final decision. Lt. Glennon is the one who advised us of it.

Q And in what manner were you pulling over cars?

A We weren't pulling cars over. We were just stopping traffic going eastbound.

Q Only eastbound?

A Yes.

Q Was that every three cars or every single car?

A Every single car.

Q Can you tell the Judge how this roadblock was publicized prior to it occurring?

A The accident was in the media a lot. I am not sure if the roadblock was publicized or not.

Q Is it fair to say to the best of your knowledge that it wasn't publicized?

MR. BRENNAN: Objection.

THE COURT: That will be sustained. His answer will stand.

Q How did you decide to chose [sic] that road to do the roadblock?

A That's where the accident was.

Q How did you decide to pull over every single car?

A We were just looking for witnesses. We couldn't be discriminating of who saw what based on every other car or anything like that.

Q Did it matter to you whether the people were even from that neighborhood?

A No.

Q Did it matter to you whether the people were even there a week prior?

A Certainly. That's the question we asked them but we didn't know that until we spoke to the person.

Q So you were – is it fair to say you were still pulling over cars even though you didn't know the answer to that question?

MR. BRENNAN: Objection.

THE COURT: It will be sustained.

BY MR. COCO:

Q Is it a fair statement that every single car was getting pulled over regardless or not whether it could help in your investigation?

A Every vehicle was stopped and every person was given a flyer.

Q Getting more specific, on the night in question did you pull over a Mazda minivan?

A As I stated, we didn't really pull over anything. All traffic was stopped and handed a flyer.

Q I'm sorry. Was a Mazda minivan one of the vehicles that was stopped?

A I believe so, yes.

Q And did you approach the Mazda minivan?

A The vehicle didn't – I didn't really approach them. I was standing in the center lane and as the vehicles – there was a line of vehicles. As each vehicle pulled up to us, we would hand them a flyer.

Q Okay. Was the Mazda minivan containing Robert Lidster one of these vehicles?

A He was in a vehicle, yes.

Q Okay. The person to my right?

A Yes.

MR. COCO: May the record reflect Detective Vasil identified my client?

THE COURT: All right.

Q And when you approached Mr. Lidster, at that time were you aware of any outstanding warrants for his arrest?

A No.

Q At the time you approached him were you aware of him being in violation of any city ordinance or Illinois State law?

A I wasn't sure but I had some sort of – some sort of feeling that something might be wrong.

Q And this is when he first approached?

A Right.

Q And why was that?

A Because he almost hit me.

Q Was he in a long line of cars that were stopped or was he – can you describe the manner that the cars were stopped?

A There must have been 10 or 15 vehicles stopped in each line and then, as we would hand out the flyer, the next vehicle would pull up.

Q Is it safe to say that but for your handing out these flyers – strike that.

At what point is it that you claim that Mr. Lidster almost hit you?

A When he pulled up at me.

Q And that is as you were attempting to stop the vehicle?

A That is as he was pulling up within 15 feet or so from the spot behind him to the sport [sic] where I was standing.

Q So was his car already stopped pursuant to the road-block before he pulled up and then, as you say, almost hit you?

A Yes.

Q And when you approached his car, did you ask him for his driver's license and insurance?

A Not right away.

Q What did you do when you approached his car?

A I asked him why he had drove towards me.

Q And what did he tell you.

A I don't recall his exact words.

Q Did you eventually ask him for his driver's license and insurance?

A Yes.

Q Did you ever attempt to hand him a flyer in question?

A I don't know if I handed him a flyer or not.

MR. COCO: If I can have a moment, your Honor?

THE COURT: Sure.

MR. COCO: Your Honor, let the record reflect I am showing counsel what I have just marked as Defendant's Exhibit No. 2, for identification.

May I approach the witness?

THE COURT: Yes.

BY MR. COCO:

Q Officer Vasil, I just asked the Judge to look at your Defendant's Exhibit No. 2, for identification. Do you recognize this document?

A Yes.

Q What is it?

A It looks like a copy of our general order reference roadblocks.

Q Okay. That's basically two pages long just pertaining to the roadblocks?

A Yes.

Q Are there any guidelines within the Lombard Police guidelines for what you refer to as an informative roadblock?

A I wasn't the one who organized it or called for it. My lieutenant did. I am not really sure what his feelings were for the stop.

Q Are there guidelines for what you called an informative roadblock?

A Not to my knowledge.

Q How many times in the past have you used what you call informative roadblocks?

A This is my first experience.

Q Are you aware of any other experiences – strike that.

Were you or any member of the Lombard Police Department filming this roadblock?

A No.

MR. COCO: May I have a moment?

THE COURT: Yes.

BY MR. COCO:

Q Was there anybody else other than the Lombard Police Department videotaping the roadblock?

A Not to my knowledge.

MR. COCO: I have no further questions.

THE COURT: Anything on cross?

MR. BRENNAN: Briefly, your Honor.

CROSS EXAMINATION

BY MR. BRENNAN:

Q Officer Vasil, when you say this was an informational stop, the purpose for this stop, the sole purpose, stopping all the traffic eastbound was to hand out flyers and ask each individual in the car whether they had seen anything the week prior, correct?

A Yes.

Q And the reason that this time and date was selected was it was the same day of the week and the same time in the morning that the accident took place the previous week, correct?

A Correct.

Q And the hope was that perhaps someone coming off a shift the same day at the same time previously might have seen something and not realized the seriousness of it and upon seeing the flyer might report that they had seen it, is that correct?

A Yes.

Q The only information you had the week before was that it was a Ford-like vehicle, a Bronco or something, a full-sized pickup that had been involved in the accident, correct?

A Yes, sir.

Q But you weren't looking for that particular vehicle on the morning of the roadblock? You were just looking for the people who may have seen it, isn't that correct?

A Yes.

Q And every single car was stopped without exception traveling eastbound, is that correct?

A Yes.

Q Can you estimate approximately the duration of each of those stops?

A We stopped each vehicle –

MR. COCO: Objection, Judge. It is only relevant if it pertains to my client.

THE COURT: He may answer.

THE WITNESS:

A 10 to 15 seconds.

BY MR. BRENNAN:

Q And as you were conducting these stops, was it your practice to ask each and every driver their name?

A No.

Q Did you ask for a driver's license?

A No.

Q Did you ask for insurance?

A No.

Q Did you check to see whether they were wearing seatbelts?

A No.

Q And at this particular car when the Mazda minivan approached you, it drove at you, is that correct?

A Yes.

Q Did you have to take any evasive action?

A Yes.

Q What did you do?

A I jumped back several steps.

Q After doing that, is that when you approached the car?

A Yes.

Q When you approached the car, you asked the defendant a question, is that correct?

A Yes.

Q And that is, "Why did you drive at me?"

A Yes.

Q When he answered that question, what, if any, observations did you make about him?

A I smelled alcoholic beverage on his breath and I noticed slurred speech when he spoke back at me.

Q Based upon that what did you do?

A I asked him to pull off to the side of the road.

Q And did you direct him anywhere at that point?

A Yes.

Q What was that?

A It was a side street. I don't recall exactly which side street it was.

Q You have no idea?

A North side, north of North Avenue I know that.

Q Was he asked to perform field sobriety tests?

A He was later, yes.

MR. COCO: Your Honor, at this time if I may interject, the basis of my motion doesn't involve field sobriety tests. It just involves the purpose for the stop.

THE COURT: I understand.

MR BRENNAN: The People won't pursue that other question then.

If I could just have a moment, your Honor?

THE COURT: Sure.

BY MR. BRENNAN:

Q Lt. Glennon, he is the one that informed you that the roadblock was going to take place, is that correct?

A Yes.

Q Can you explain where Lt. Glennon is situated in the hierarchy of the Lombard Police Department? He is your immediate supervisor, correct?

A No.

Q Lt. Glennon, who is his immediate supervisor?

A Deputy Chief Cuny.

Q And then the Chief, is that correct?

A Yes.

Q And is it fair to say he is pretty high up in the organization?

MR. COCO: Objection.

THE COURT: It will be sustained.

BY MR. BRENNAN:

Q And Lt. Glennon, did he call a meeting and apprise you of this roadblock?

A He did.

Q Can you describe the roadblock scene? How many emergency vehicles were at the scene?

A Anywhere between a half dozen to a dozen emergency vehicles between our vehicles, police department vehicles, and the Du Page County emergency service vehicles.

Q Were there lights oscillating?

A Yes.

Q And were you – were you dressed in a manner to apprise the defendant that you were police officers?

A I was in plainclothes but I had an orange reflective vest that said Police on it and I was holding my orange cone to make sure that everyone saw me.

Q If I can have one moment, your Honor?

THE COURT: Yes.

MR. BRENNAN: People having nothing further.

THE COURT: Mr. Coco, anything back?

MR. COCO: Yes, Judge.

REDIRECT EXAMINATION

BY MR. COCO

Q What business shifts get out on Saturday nights around midnight?

MR. BRENNAN: Objection to the question. Speculation.

THE COURT: If he knows, he can answer.

THE WITNESS:

A Certainly we were thinking the post office where the person who was hit, the large postal installation, Carol Stream – the gentleman who was hit works at the post office and they have shifts all through the night.

So we were thinking maybe someone who worked there or any other factory job. North Avenue is filled with industrial parks and we thought maybe someone getting off there or a fast-food restaurant who would normally come down that shift, down that street, might have seen something.

BY MR. COCO:

Q At when you did this roadblock, did you have personal knowledge of any of these businesses or any of their shift changes including the post office?

A Yes.

Q Okay. Which business and when was their shift change?

A The post office, and I know that the person who was struck – I don't know exactly what time he got off but I know that he had gotten off just previous to him riding his bike down North Avenue.

Q Yes, but you don't know when his shift got off?

A I know it was within a half hour of him being struck by the vehicle.

MR. COCO: I have no further questions.

THE COURT: Okay. Anything back?

MR. BRENNAN: Nothing back.

THE COURT: Okay. Thank you, Officer. You may step down.

(Witness excused.)

MR. COCO: Your Honor, at this time I will make a motion for a directed finding.

THE COURT: That will be denied.

MR. COCO: Could I briefly be heard?

THE COURT: Go right ahead.

MR. COCO: Pursuant to People V. Adams case, your Honor, that is 293 Il.Ap.3d [sic], 180, on the very last page of that case the Second District was five – five things that need to be shown for this to be a valid check point.

Specifically looking at No. 4, "Was the roadblock publicized clearly in advance," and as Officer Vasil testified, it was not publicized.

Also looking at Point No. One, "Were authorized selected by policy level or politically accountable individuals?"

While it did come out that Lt. Glennon is a lieutenant, there is no evidence that he is a policy level or politically accountable individual.

Further, your Honor, Detective Vasil admitted that there are no roadblock guidelines for what he refers to as an informational roadblock.

Finally, there has been no evidence that this in any way advances public interest. If he wants to find out who the possible witnesses are, there are various news media and a much less intrusive way they can go about it.

THE COURT: Okay. Your motion is denied.

MR. COCO: Thank you.

THE COURT: I have looked at those same factors and I specifically find that they have met at least four, if not five, of those factors.

Lt. Glennon is a lieutenant in the hierarchy of the police department. He is at least No. 3 position. The decision was not made by a road officer. The decision was made by a supervisor.

Every vehicle was stopped. Your motion claims in both directions. The officer testified only eastbound traffic was stopped. Every car was stopped. The detention was at a minimum period of time.

Certainly the publication in regard to the death was well publicized. The basis to make the stop at the same time was trying to determine if any witnesses at that same time of night of the same day would have seen anything.

I think the factors in this case are readily distinguishable from the Adams stop about a village sticker.

There was certainly a sufficient show of the official nature of the operation. There were up to 12 squad cars or emergency vehicles with their lights on making the stop.

I find that the factors that are set forth in the Adams were met in this case and that the officer in the investigation and his brief contact with Mr. Lister was not an unlawful search and seizure.

Your motion is denied.

MR. COCO: Your Honor, actually it was my intention to put on some evidence. I am sorry. I am just arguing for a directed finding.

THE COURT: You put on – you called your witness. You then made a motion.

MR. COCO: I am sorry, Judge.

THE COURT: At the end of your case I have ruled.

MR. COCO: Jude, I misspoke. I apologize.

THE COURT: What do you want to do with the underlying case?

MR. COCO: Set it for trial, your Honor.

THE COURT: Okay.

MR. COCO: Can we have a jury trial date, Judge?

THE COURT: Sure. What is doing in September? Do you know why the 20th, 21st and 22nd are blocked out? Are those specifically set juries?

MR. BRENNAN: I have no idea why they are blocked out. Do you?

MS. EKL: No.

MR. BRENNAN: Back in September? No, none of ours are continued.

THE COURT: Well, this will certainly go and it will be No. One. So we will make it the 27th of September on a Monday morning. You will be No. One trial.

MR. COCO: Thank you, Judge.

THE COURT: Okay.

MR. BRENNAN: One of those days, Judge, we will check the calendar and the computer and see what might be there.

THE COURT: 20th, 21st and 22nd of September.

MR. BRENNAN: We will check and see what is going on.

THE COURT: Okay.

MR. BRENNAN: Thank you, Judge.

MR. COCO: Thank you, Judge.

(Whereupon the hearing in the above-entitled cause was continued to Monday, the 27th day of September, A.D. 1999, at the hour of 9:30 o'clock A.M.)

[Court Reporter's Certification Omitted]

Supreme Court, U.S.
FILED
JUL 3 ~ 2003
OFFICE OF THE CLERK

No. 02-1060

In the Supreme Court of the United States

ILLINOIS, PETITIONER,

v.

ROBERT S. LIDSTER, RESPONDENT.

On Writ of Certiorari to the Supreme Court of Illinois

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether *Indianapolis v. Edmond*, 531 U.S. 32 (2000), prohibits police officers from conducting a checkpoint organized to investigate a prior offense, at which checkpoint law enforcement officers briefly stopped all oncoming motorists to hand out flyers about and look for witnesses to the offense, where the checkpoint was conducted exactly one week after — and at approximately the same time of day as — the offense, and where the checkpoint otherwise met the reasonableness standard articulated in *Brown v. Texas*, 443 U.S. 47 (1979).

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of Illinois (Pet. App. 1a-22a) is reported at 202 Ill.2d 1, 779 N.E.2d 855 (2002). The opinion of the Appellate Court of Illinois, Second District (Pet. App. 23a-28a), is reported at 319 Ill.App.3d 825, 747 N.E.2d 419 (2d Dist. 2001). The oral ruling of the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois (J.A. 30-31), is unreported.

JURISDICTION

The Supreme Court of Illinois entered judgment on October 18, 2002. The petition for a writ of certiorari was filed on January 9, 2003, and granted on May 5, 2003. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

Following a bench trial, the Circuit Court of the Eighteenth Judicial Circuit convicted respondent of driving under the influence of alcohol, in violation of 625 ILCS 5/11-501(a)(2) (West 1996). The Illinois Appellate Court reversed the

conviction. Relying upon *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), the court ruled that the informational checkpoint where respondent was apprehended effected an unreasonable seizure under the Fourth Amendment, and therefore that the Circuit Court should have quashed respondent's arrest and suppressed evidence regarding his field sobriety tests. The Illinois Supreme Court affirmed, agreeing with the Appellate Court that the checkpoint was *per se* unlawful under *Edmond* because it sought evidence related to a criminal investigation.

1. In the evening of August 30, 1997, Lombard police officers set up an informational checkpoint on the eastbound side of North Avenue in Lombard, Illinois. Pet App. 1a; J.A. 15. The sole purpose of the checkpoint was to find witnesses to a fatal hit-and-run accident that occurred on August 23, 1997, one week earlier, at the same location, and at the same time of day. Pet. App. 1a-2a; J.A. 23-24. The officers' hope was that someone leaving a late shift at work, having seen something the week prior but not having realized its seriousness at the time, would come forward with relevant information. J.A. 23. The officers were looking only for witnesses, not for the vehicle or driver actually involved in the hit-and-run. J.A. 24.

Detective Ray Vasil, who wore an orange reflective vest with the word "Police" on it, was stationed fifteen feet beyond the line formed by the motorists. Pet. App. 2a; J.A. 27. As each vehicle pulled up, Detective Vasil handed the driver a flyer requesting information about the accident, and asked if he or she had witnessed anything on the night in question. Pet. App. 2a; J.A. 15-16.

The flyer, entitled "ALERT" and "FATAL HIT & RUN ACCIDENT," read:

> The Lombard Police are looking for assistance in identifying the vehicle and driver involved in this accident[,] which killed a 70 year old bicyclist. The accident occurred on Saturday Morning August 23rd[,] 12:15 AM (15 minutes after midnight).

J.A. 9. The flyer described the suspect vehicle as follows:

> Suspect Vehicle
>
> 1980 – 1986
>
> Ford "Full Size" Pick-Up or
>
> Ford Bronco
>
> Damage: Right Front Headlight Area

J.A. 9. The flyer concluded by requesting that "anyone with information about the car or driver, or who may have witnessed the accident[,] please call the Lombard police at (630) 620-5955," and by promising that "calls will be kept confidential upon request." J.A. 9.

All eastbound cars on North Avenue passed through the checkpoint. J.A. 17-19, 24. Between six and twelve police and emergency vehicles, some or all with oscillating lights, were present. Pet. App. 2a; J.A. 27. Each vehicle's encounter with Detective Vasil took approximately ten to fifteen seconds. J.A. 24. Detective Vasil did not ask the driver for his or her name, did not ask to see a driver's license, did not ask for proof of insurance, and did not check to see if the driver was wearing a seat belt. J.A. 24-25.

As respondent passed through the checkpoint, he nearly struck Detective Vasil with his Mazda minivan. Pet. App. 2a; J.A. 19-21, 25. This led Detective Vasil to request respondent's driver's license and insurance card. Pet. App. 2a; J.A. 21. Because respondent slurred his speech and had the smell of alcohol on his breath, Detective Vasil directed respondent to a side street to perform field sobriety tests. Pet. App. 2a; J.A. 25-26. After performing those tests for another detective, respon-

dent was arrested and charged with driving under the influence of alcohol.

2. Respondent filed a pretrial motion to suppress his arrest and all resulting evidence on the ground that the checkpoint violated the Fourth Amendment. J.A. 5-9. On June 4, 1999, the Circuit Court conducted an evidentiary hearing on the motion. J.A. 10-32. After receiving testimony from Detective Vasil and hearing the argument of counsel, the court denied the motion. J.A. 30-31.

In support of its ruling, the Circuit Court noted that a supervisor, not a road officer, made the decision to implement the checkpoint; that all eastbound traffic on North Avenue was stopped; that there "was certainly a sufficient show of the official nature of the operation" in that there "were up to 12 squad cars or emergency vehicles with their lights on"; and that the stop was for a "minimum period of time." J.A. 30-31. The court further observed that the checkpoint was established "at the same time" as the accident "to determine if any witnesses at that same time of night of the same day would have seen anything." J.A. 30.

At his bench trial on September 27, 1999, respondent was found guilty of driving under the influence of alcohol. Pet. App. 3a. The Circuit Court sentenced respondent to one year of conditional discharge and required him to participate in counseling, to complete fourteen days in the Sheriff's Work Alternative Program, and to pay a $200 fine. Pet. App. 3a.

3. The Illinois Appellate Court reversed the conviction. Pet. App. 23a-28a. Relying upon *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), the court concluded that the checkpoint was an unreasonable seizure under the Fourth Amendment. Pet. App. 23a-28a.

The Appellate Court cited *Edmond* for the proposition that "the usual requirement of individualized suspicion" would not be suspended "where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes." Pet. App. 25a-26a. The court found that *Edmond* governed the Lombard checkpoint because its purpose — finding witnesses to an unsolved crime — "was to seek evidence of 'ordinary criminal wrongdoing'" and "to search for evidence of a crime." Pet. App. 26a. According to the Appellate Court, "*Edmond* strongly suggests that a criminal investigation can never be the basis for a roadblock, at least absent exigent circumstances not present here." Pet. App. 27a.

4. In a four-to-three decision, the Illinois Supreme Court affirmed. Pet. App. 1a-22a. The majority first noted that an informational checkpoint "does not fall within the scope of the limited exceptions heretofore approved" by this Court in *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (immigration checkpoints), and *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990) (sobriety checkpoints). Pet. App. 7a. The majority then stated that the Lombard checkpoint was "designed primarily to serve the general interest in crime control," and therefore was precisely the type of intrusion that *Edmond* held *per se* unlawful. Pet. App. 7a.

The majority rejected the State's contention that *Edmond* was inapposite because the Lombard checkpoint was intended not "to ferret out evidence that the motorists *themselves* had committed [a] crime," but rather to canvass for evidence regarding a known but unsolved crime that had already been committed by *another* motorist. Pet App. 7a-8a (emphasis added). Finally, the majority expressed its concern that validating informational roadblocks under the Fourth Amendment would "ha[ve] the potential to make roadblocks 'a routine part of American life'" in light of the large numbers of

murders and other serious felonies that take place every year. Pet. App. 8a-9a (quoting *Edmond*, 531 U.S. at 42).

Joined by two of his colleagues, Justice Thomas dissented on the ground that *Edmond* does not govern a "strictly informational roadblock," by which he meant a roadblock "involving police canvassing for information about a specific, known crime." Pet. App. 12a. According to the dissent, the majority's contrary conclusion rested upon a misinterpretation of the term "ordinary crime control" in *Edmond*. That term, the dissent explained, means detecting unknown crimes committed by the motorists being stopped, as opposed to seeking information from motorists about specific but unsolved crimes that had already been committed by others. Pet. App. 14a-15a. To support its view, the dissent cited *Edmond*'s admonition that "[w]e cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." Pet. App. 14a (quoting *Edmond*, 531 U.S. at 44). Because the Lombard police "did not seek to interrogate and inspect motorists to ferret out evidence that the motorists themselves had committed a crime that was as yet unknown to police," the dissent concluded that *Edmond* did not govern the Lombard checkpoint. Pet. App. 15a.

Having determined that the checkpoint was not *per se* unlawful under *Edmond*, the dissent proceeded to evaluate the checkpoint against the reasonableness factors articulated in *Brown v. Texas*, 443 U.S. 47 (1979). First, the dissent explained that the checkpoint served the important public interest of solving a fatal hit-and-run accident. Pet. App. 20a. Second, the dissent noted that the checkpoint was "narrowly tailored for maximum effectiveness" in that "the timing of the roadblock, exactly one week after the crime at approximately the same time of day, was purposely designed to stop motorists who might routinely travel that route at the end of their work

shift." Pet. App. 20a. Third, the dissent found that the checkpoint was objectively unobtrusive, in that motorists "were detained for approximately 10 to 15 seconds, just long enough for police to hand out a flyer and alert motorists of the accident of the previous week" and "were not asked for their names, driver's licenses, or insurance cards." Pet. App. 21a. Finally, the dissent concluded that the checkpoint was subjectively unobtrusive given "the official nature of the operation" and the fact that "all eastbound traffic was stopped" "in a systematic and preestablished manner." Pet. App. 21a.

SUMMARY OF ARGUMENT

I. The Supreme Court of Illinois erred in concluding that the Lombard checkpoint is governed by *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). *Edmond* held that a suspicionless checkpoint is *per se* invalid under the Fourth Amendment only if its "primary purpose was to detect evidence of ordinary criminal wrongdoing." *Id.* at 41. *Edmond* itself, together with the legal and factual backdrop against which *Edmond* was decided, makes clear that the *per se* rule is limited to checkpoints designed to detect unlawful activity by the motorists themselves. *Edmond* does not apply to the informational checkpoint here, at which a police detective handed out flyers and briefly asked questions in an effort to find witnesses to a known but unsolved crime committed one week earlier by another motorist.

II. Because the Lombard checkpoint is not governed by *Edmond*, its validity depends upon the factors articulated in *Brown v. Texas*, 443 U.S. 47 (1979), and applied in this Court's other checkpoint cases. Those factors are easily satisfied here. First, the checkpoint served the important public purpose of finding witnesses to an unsolved homicide. Second, the time and place of the checkpoint were carefully tailored to advance the investigation. Third, the intrusion on the motorists' liberty

was minimal. At each encounter with Detective Vasil, which lasted approximately ten to fifteen seconds, Vasil did not ask motorists for their names, driver's licenses or proof of insurance, and did not check to see if motorists were wearing seat belts. The official nature of the checkpoint, the fact that all motorists were stopped, and the officers' lack of discretion are all hallmarks of checkpoints that this Court has consistently found unobtrusive. Finally, the Illinois Supreme Court's argument that validating the Lombard checkpoint would result in the proliferation of informational checkpoints ignores not only this Court's roadblock cases, but also the constraints imposed by the *Brown* reasonableness factors.

ARGUMENT

I. The Lombard Checkpoint Is Not Invalid Under *City of Indianapolis v. Edmond*.

The Fourth Amendment requires that searches and seizures be reasonable. Although seizures are ordinarily unreasonable absent individualized suspicion of wrongdoing, "the Fourth Amendment imposes no irreducible requirement of such suspicion." *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976).

This Court has validated the suspicionless seizure of vehicles at certain types of checkpoints. See *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990) (sobriety checkpoint designed to identify drunk drivers); *Martinez-Fuerte*, *supra* (Border Patrol checkpoints designed to intercept illegal aliens); cf. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (suggesting that roadblock designed to verify driver's licenses and vehicle registrations would be permissible). In determining whether such checkpoints are reasonable under the Fourth Amendment, this Court considers the factors set forth in *Brown v. Texas*, 443 U.S. 47 (1979), and applied in *Sitz*, *Martinez-Fuerte* and *Prouse*. Generally speaking, those factors balance the

government's interest in implementing the checkpoint against the severity of the intrusion on the motorist.

In *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), this Court invalidated checkpoints whose primary purpose was to discover and interdict illegal narcotics in the vehicles passing through the checkpoints. In so ruling, the Court did not invoke the *Brown* reasonableness factors. Rather, the Court held that "a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing" is, absent exigencies not present here, *per se* unlawful under the Fourth Amendment. *Edmond*, 531 U.S. at 41. That is, "[w]hen law enforcement authorities pursue primarily general crime control purposes at checkpoints * * *, stops can only be justified by some quantum of individualized suspicion." *Id.* at 47. The Court was careful to limit the scope of its holding, making clear that its decision did not "speak to other intrusions aimed primarily at purposes beyond the general interest in crime control." *Id.* at 48.

The dispositive question in this case — at least for purposes of determining whether *Edmond* renders the Lombard informational checkpoint *per se* unlawful without regard to the *Brown* reasonableness factors — is whether the checkpoint served "primarily general crime control purposes" or, alternatively, whether it was "aimed primarily at purposes beyond the general interest in crime control." That question, in turn, rests upon what exactly it means for a checkpoint to serve "primarily general crime control interests."

The Illinois Supreme Court gave that term an impermissibly broad reading. According to the majority opinion, a checkpoint has the primary purpose of "general crime control" not only if it seeks to detect whether the motorists themselves are committing unlawful acts, but also if it seeks to advance any law enforcement purpose whatsoever, including (as here)

canvassing motorists for information about a known but unsolved crime committed by another.

It is no doubt true that certain language used in *Edmond* — such as "detect evidence of ordinary criminal wrongdoing" and "general crime control" — could, if viewed in isolation, be interpreted to encompass checkpoints where motorists are stopped for *any* law enforcement purpose, including to canvass citizens for information about crimes committed by others. But the language in question was used in context. The context demonstrates that "general crime control" does not encompass *all* law enforcement purposes, but instead is limited to instances where, as in *Edmond* itself, police officers intend to detect whether individuals actually passing through the checkpoint happen to be engaged in unlawful activity.

Edmond addressed this very point when it emphatically rejected the suggestion that it had adopted a "non-law-enforcement primary purpose test." *Id.* at 44 n.1. Rather, the Court held, *Edmond* "turn[ed] on the fact that the primary purpose of the Indianapolis checkpoints is to advance the general interest in crime control." *Ibid.* In drawing a distinction between checkpoints that serve "law-enforcement" purposes and those that serve "the general interest in crime control," the Court recognized that a checkpoint can serve a "law-enforcement" purpose without being classified as one that advances "the general interest in crime control." That is, not all law-enforcement-related checkpoints serve "the general interest in crime control," which means that not all law-enforcement-related checkpoints are *per se* unlawful. See also *Sitz*, 496 U.S. at 450 (rejecting contention that "there must be a showing of some special governmental need 'beyond the normal need' for criminal law enforcement before a balancing analysis is appropriate").

An informational checkpoint designed to find witnesses to and information about an earlier and unsolved crime serves "law-enforcement" purposes, but it does not "advance the general interest in crime control," and therefore is not *per se* invalid under *Edmond*. As the dissent below correctly observed (Pet. App. 14a), the following passage from *Edmond* makes this clear:

> We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops justified only by the *generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime.*

531 U.S. at 44 (emphasis added). This passage, particularly the second sentence, confirms that when *Edmond* spoke of using a checkpoint to advance "the ordinary enterprise of investigating crimes," it meant investigating crimes by those passing through the checkpoint. Consequently, *Edmond* does not govern *all* law enforcement-related checkpoints, but only a particular subset of law enforcement-related checkpoints — *i.e.*, those used as a dragnet to detect unknown, unlawful activity by the motorists themselves.

Any doubt regarding *Edmond*'s scope dissipates upon considering the backdrop against which *Edmond* was decided. This Court's checkpoint cases, including *Edmond*, all involved circumstances where law enforcement officers were attempting to determine whether the motorists themselves were engaging in unlawful activity. See *Edmond*, 531 U.S. at 40-41 (determining presence of narcotics in vehicle); *Sitz*, 496 U.S. at 450-451 (determining whether driver was intoxicated); *Martinez-Fuerte*, 428 U.S. at 545 (determining whether vehicle contained illegal aliens); cf. *Prouse*, 440 U.S. at 650

(determining whether motorist had valid driver's license and vehicle registration); *Carroll v. United States*, 267 U.S. 132, 153-154 (1925) ("It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor * * * * "). Thus, when *Edmond* spoke of "the ordinary enterprise of investigating crimes," 531 U.S. at 44, it could only have meant detecting previously unknown criminal activity by the occupants of the vehicle being stopped, as opposed to seeking from those occupants information about known, unsolved crimes that had been committed by others.

The Illinois Supreme Court offered no basis, other than its own misreading of *Edmond*, to declare informational checkpoints *per se* invalid under the Fourth Amendment. Such a rule would run contrary to settled constitutional principles. This Court has long recognized that "[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process" is a "traditional function of police officers in investigating crime." *Miranda v. Arizona*, 384 U.S. 436, 477 (1966). It follows that "[l]aw enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen." *United States v. Drayton*, 536 U.S. 194, 200 (2002); accord, AMERICAN LAW INSTITUTE, MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, § 110.1(1) (1975) ("A law enforcement officer may, subject to the provisions of this Code or other law, request any person to furnish information or otherwise cooperate in the investigation or prevention of crime."). Moreover, "[i]t is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement." *Miranda*, 384 U.S. at 477-478.

Although canvassing typically takes place by approaching pedestrians or walking door-to-door, the same considerations hold when the police canvass motorists. There is, of course, a practical difference in that officers can put questions to motorists and hand them flyers only by bringing their vehicles to a halt. But that provides no conceivable basis under the Fourth Amendment to erect a rigid distinction between canvassing pedestrians (permissible) and canvassing motorists (*per se* invalid). See *State v. Gerrish*, 311 Or. 506, 513, 815 P.2d 1244, 1248 (1991) (where "flagging [a motorist] down and directing him to stop were the only means available to get [his] attention long enough to request information," such actions were "analogous to tapping a citizen on the shoulder at the outset to get a citizen's attention") (internal quotations omitted). Indeed, the Illinois Supreme Court's holding creates the anomaly of "guarantee[ing] a motorist greater freedom of movement than is afforded a pedestrian." *State v. Holmes*, 311 Or. 400, 411, 813 P.2d 28, 34 (1991).

Accordingly, in concluding that *Edmond* governs informational checkpoints, the Illinois Supreme Court did more than simply misinterpret *Edmond*. The court also erected a nonsensical and counterintuitive distinction under the Fourth Amendment between (i) canvassing pedestrians for the purpose of obtaining information about known but unsolved crimes and (ii) canvassing motorists for the same exact purpose. *Edmond*, by its own terms, does not extend to informational checkpoints, and it should not be so extended.

Here, there is no dispute that the primary purpose of the Lombard checkpoint was to seek information about and find witnesses to the fatal hit-and-run accident that had occurred at the same place exactly one week prior. By contrast to the checkpoint in *Edmond*, the Lombard checkpoint was not implemented to determine whether the motorists themselves were engaging or had engaged in unlawful activity.

Consequently, the Lombard checkpoint is not governed by *Edmond* and therefore is not *per se* invalid under the Fourth Amendment. See *Burns v. Commonwealth*, 261 Va. 307, 322, 541 S.E.2d 872, 883 (2001) (*Edmond* does not govern roadblock whose purpose was to "canvas[s] drivers who were passing through the area, to see whether they had seen or heard anything during the time period when the crime [a murder] had probably been committed the previous day"), cert. denied, 534 U.S. 1043 (2001).

II. The Lombard Checkpoint Satisfies The Reasonableness Factors Applied In This Court's Checkpoint Cases.

Because the Lombard checkpoint is not *per se* unlawful under *Edmond*, determining its validity under the Fourth Amendment requires application of the reasonableness factors set forth in *Brown* and applied in *Sitz*, *Prouse*, and *Martinez-Fuerte*. Those factors are "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Brown*, 443 U.S. at 51.

A. The checkpoint served a weighty public concern.

There can be little doubt that the Lombard checkpoint served a weighty public concern. The checkpoint's primary purpose — indeed, its only purpose — was to find witnesses to and information about an unsolved homicide. That purpose, as the Supreme Court of Virginia recognized, qualifies as a weighty public concern. *Burns*, 261 Va. at 322, 541 S.E.2d at 883 ("the fact that a murder had occurred was a matter of grave public concern"). The purpose is at least as weighty, if not more so, than the purposes that this Court has found sufficient under the Fourth Amendment. See *Edmond*, 531 U.S. at 37-38 (verifying driver's licenses and vehicle registrations) (citing *Prouse*, 440 U.S. at 663); *Sitz*, 496 U.S. at 451 (removing

drunk drivers from the road); *Martinez-Fuerte*, 428 U.S. at 556 (interdicting illegal aliens).

B. The checkpoint was designed to advance the public's interest in solving the crime.

The Lombard checkpoint also was carefully designed to advance the public's interest in solving the fatal hit-and-run accident. As an initial matter, a vehicular checkpoint was uniquely appropriate to advance an investigation into the hit-and-run accident. Because the lone victim had been killed and the perpetrator left no fingerprints or DNA evidence, the Lombard police appropriately concluded that eyewitness information from other motorists was important to the investigation.

Moreover, the Lombard police did not arbitrarily choose the time or place of the checkpoint. Rather, the checkpoint was set up at the precise location of the hit-and-run accident, exactly one week later at the same time of day, in order to increase the likelihood of finding motorists who might have relevant information. J.A. 23-24. As the trial court correctly concluded (J.A. 30-31), it was entirely reasonable for the Lombard police to believe that motorists who regularly travel that route might have information regarding a hit-and-run that occurred at the same place and the same time of night the previous week.

That the Lombard police might have had other means to obtain evidence or find witnesses is immaterial. As this Court's checkpoint cases caution, law enforcement authorities, who have the best understanding of how to conduct an effective criminal investigation and the available resources, must be given the latitude to implement appropriate tools to solve crimes that might otherwise remain unsolved. See *Sitz*, 496 U.S. at 453-454 ("for purposes of Fourth Amendment analysis, the choice among * * * reasonable alternatives remains with the governmental officials who have a unique understanding of, and

responsibility for, limited public resources, including a finite number of police officers"); *Martinez-Fuerte*, 428 U.S. at 566 ("deference is to be given to the administrative decisions of higher ranking officers").

C. The checkpoint was minimally intrusive.

The Lombard checkpoint imposed a minimal intrusion on the liberty of motorists. This is so with respect to both the "objective" and "subjective" aspects of the intrusion. *Sitz*, 496 U.S. at 452.

The "objective" aspect of an intrusion is "measured by the duration of the seizure and the intensity of the investigation." *Ibid.* Here, each encounter with Detective Vasil lasted ten to fifteen seconds. J.A. 24. This was briefer than the delays imposed upon the motorists in *Sitz*, 496 U.S. at 448 ("approximately 25 seconds"), and *Martinez-Fuerte*, 428 U.S. at 547 ("average length of an investigation in the secondary inspection area is three to five minutes"). Moreover, Detective Vasil did not ask motorists for their names, driver's licenses or proof of insurance, and did not check to see if motorists were wearing seat belts. J.A. 24-25. Rather, Vasil merely handed each motorist a flyer and asked if he or she had information regarding the hit-and-run. J.A. 15. This caused no more of an intrusion than checkpoints approved in *Martinez-Fuerte*, 428 U.S. at 558 (occupants subject to visual inspection, questioning, and possible requests for documents), and *Sitz*, 496 U.S. at 450 (motorists subject to "questioning and observation").[1]

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[1] Because his minivan almost struck Detective Vasil, respondent was asked for his driver's license and registration, and because he slurred his words and had alcohol on his breath, respondent was sent to a side street to perform field sobriety tests. J.A. 19-21, 25. Given the objective evidence of respondent's apparent intoxication, those additional measures were justified under the Fourth Amendment. See *Smith v. Ball State Univ.*, 295 F.3d 763, 768-769 (7th Cir. 2002); *Holmes*, 311 Or. at 414, 813 P.2d at 36.

Indeed, the Lombard checkpoint caused less of an intrusion than those approved in *Martinez-Fuerte* and *Sitz* and those that the Court suggested it would approve in *Prouse*. The reason is that the Lombard checkpoint — unlike the checkpoints in *Martinez-Fuerte*, *Sitz* and *Prouse* — did not seek to uncover unlawful activity by the motorists themselves. The fact that the motorists were not the targets of the officers' law enforcement effort reduced, if not eliminated, the potential adversarial nature of the encounter. And because the motorists did not have to fear adverse consequences from the informational checkpoint, they would be less likely "to be frightened" than motorists stopped at sobriety, illegal alien or driver's license checkpoints. *Sitz*, 496 U.S. at 453 (internal quotations omitted).[2]

Equally minimal was the "subjective" aspect of the intrusion, which focuses on the "potential for generating fear and surprise." *Id.* at 452. As this Court recognized:

> '[T]he circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving-patrol stop. Roving patrols often operate at

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[2] For the same reasons, the motorists' encounters with Detective Vasil were arguably less intrusive than encounters that do not even rise to the level of Fourth Amendment seizures. See *Drayton*, 536 U.S. at 198 (no seizure where officers stated: "We're conducting bus interdiction [sic], attempting to deter drugs and illegal weapons being transported on the bus"); *Florida v. Bostick*, 501 U.S. 429, 431-432 (1991) (no seizure where officers on a bus "explained their presence as narcotics agents on the lookout for illegal drugs"); *INS v. Delgado*, 466 U.S. 210, 212 (1984) (no seizure where INS agents, "after identifying themselves," asked factory employees "from one to three questions relating to their citizenship").

> night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion.'

Martinez-Fuerte, 428 U.S. at 558 (quoting *United States v. Ortiz*, 422 U.S. 891, 894-895 (1975)); see also *Prouse*, 440 U.S. at 657 (same). Here, the official nature of the checkpoint was made obvious by the presence of police and emergency vehicles, the oscillating lights, and Detective Vasil's orange reflective vest with the word "Police" on it. In this respect, the Lombard checkpoint is indistinguishable from the checkpoints approved in *Martinez-Fuerte* and *Sitz*.

Moreover, Lombard officers exercised no discretion over which vehicles would be stopped, but rather stopped all eastbound traffic on North Avenue. J.A. 18-19. This is crucial under this Court's precedents, which distinguish "arbitrary invasions solely at the unfettered discretion of officers in the field" from checkpoints "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Brown*, 443 U.S. at 51; cf. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, *supra*, at 266 (with respect to roadblocks implemented to apprehend a suspected felon, "a principal safeguard in the provision is that the roadblock must be applied to all or most of the cars traveling in a particular direction. Thus the humiliation implicit in being singled out as an object of suspicion is absent.").

In sum, the Lombard checkpoint imposed only a minimal intrusion on motorists, and was justified by the public's significant interest in solving an unsolved fatal hit-and-run accident.

D. Validating the Lombard checkpoint would not result in an unacceptable proliferation of informational checkpoints.

Finally, we address the Illinois Supreme Court's concern that validating the Lombard checkpoint under the Fourth Amendment would result in the Nation's roads being inundated with informational roadblocks. As the majority opinion put it:

> In 2000, 870 murders, 49,652 assaults, 25,168 robberies, 77,947 burglaries, 306,805 thefts, 55,222 motor vehicle thefts, and 2,899 arsons were known by police to have been committed in Illinois. * * * Should the police have been allowed to set up roadblocks to obtain information from potential witnesses for each murder? What of a robbery, an aggravated criminal sexual assault, an arson or any other serious crime? According to the State, for a period of at least a week after each crime, police could set up roadblocks with the specific purpose of making inquiries of persons who were possibly witnesses to a crime. The troubling specter then arises that the streets of Cook County, or at least the streets of Chicago, would be adorned with roadblocks, an outcome clearly unacceptable under *Edmond*.

Pet. App. 8a-9a.

The Illinois Supreme Court's argument proves too much, for if it were valid, then *Sitz* and *Martinez-Fuerte* would have been decided differently. Just as there is no theoretical limit to the number of informational checkpoints that might be implemented to solve the millions of crimes committed every year, there likewise is no theoretical limit to the number of checkpoints that might be implemented to intercept and apprehend intoxicated drivers, unlicenced drivers or illegal aliens. The lack of such a theoretical limit did not give cause to

invalidate the checkpoints in *Sitz* and *Martinez-Fuerte*, and it should not do so here.

The reasoning is two-fold. First, the finite resources of law enforcement agencies would make it extremely difficult, if not impossible, to set up informational checkpoints for a great many serious crimes. Thus, although there may be no *theoretical* limit to the number of possible informational checkpoints, there are very real *practical* limits. Those limits are suggested not only by common sense, but by the undeniable reality that in the years since *Sitz*, *Prouse* and *Martinez-Fuerte* were decided, our roads have not been inundated with checkpoints to intercept intoxicated drivers, illegal aliens, or motorists without valid driver's licenses or vehicle registrations. Cf. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, *supra*, at 266 (with respect to roadblocks implemented to apprehend a suspected felon, "the expense to law enforcement agencies and public intolerance of the inconvenience impose a check on unreasonable recourse to this power").

Second, and more important, the *Brown* reasonableness factors impose significant *legal* limits on the use of informational and other checkpoints. See *Martinez-Fuerte*, 428 U.S. at 565 (the "reasonableness of checkpoint stops * * * turns on * * * factors that are not susceptible to the distortion of hindsight, and therefore will be open to post-stop review"). As shown above, a checkpoint must serve an important public purpose, be carefully tailored to solving the crime under investigation, and not intrude upon motorists too severely.

Given the fact-intensive nature of the reasonableness inquiry, it is not possible to catalog in advance which checkpoints, implemented under which circumstances and at which particular locations, would or would not be valid. But it is clear that the checkpoint in this case falls on the reasonable side of the line — it was implemented to solve a homicide; its

time and place were carefully designed to maximize the chance of finding witnesses and relevant information; and it was minimally intrusive, both objectively and subjectively. The Lombard checkpoint was unimpeachable under this Court's jurisprudence and eminently reasonable under the Fourth Amendment.

CONCLUSION

The judgment of the Supreme Court of Illinois should be reversed.

Respectfully submitted.

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JULY 2003

(12)

No. 02-1060

Supreme Court, U.S.
FILED
AUG 1 2003
OFFICE OF THE CLERK

In The

Supreme Court of the United States

ILLINOIS,

Petitioner,

v.

ROBERT S. LIDSTER,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF FOR THE RESPONDENT

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39 pp

QUESTION PRESENTED

Whether an interrogational roadblock whose sole purpose is to gather evidence regarding a one week old hit-and-run accident, by detaining motorists and interrogating them about their whereabouts and observations the week prior, violates the Fourth Amendment, particularly when there are insufficient guidelines in place to constrain the officers' activities?

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STATEMENT OF THE CASE

On August 23, 1997, at about 12:15 a.m., a bicyclist was struck by a vehicle which then failed to remain at the scene of the accident. The bicyclist died as a result of his injuries. J.A. 16. At or about midnight, August 30, 1997, the Lombard police set up a roadblock on North Avenue in Lombard, Illinois. J.A. 15. The roadblock was set up one week later at the same location and approximately the same time as the accident. The roadblock was set up to "work out a fatal hit-and-run accident", according to Detective Vasil, who stopped the defendant's vehicle that evening. J.A. 15.[1] The suspect vehicle was described as a 1980-1986 Ford full-size pickup truck or Bronco, with right front headlight damage and a missing headlight/turn signal housing unit. J.A. 9. North Avenue is a major highway passing through the western suburbs of Chicago, Illinois.

There, every eastbound vehicle on North Avenue was stopped by the police. Although Detective Vasil claimed that contact with motorists would last about 10 to 15 seconds, there was a waiting line preceding the contact, with 10 to 15 vehicles stopped in each lane. J.A. 20. At least three lanes of vehicles were stopped at the roadblock, with six to twelve emergency vehicles present. Detective Vasil was manning the center lane. J.A. 19. As each vehicle pulled up, a police officer would question the people in the car as to whether they were at that location

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[1] Even though Detective Vasil suggested that the roadblock was set up only to look for witnesses (J.A. 24), nothing in the record explains how this same roadblock wasn't or couldn't be used to directly look for the suspect or the suspect's vehicle.

the week prior, and whether they had seen anything the week prior. J.A. 18, 23. The officer would also hand the driver a flyer. J.A. 9.

Several cars, including the Defendant's, were sent to secondary staging areas.[1]

The roadblock was not publicized in advance. J.A. 18. No written guidelines were in effect for this type of roadblock. Pet. App. 2a; J.A. 22.

While detective Vasil was standing in the center lane of traffic, Respondent Robert Lidster pulled up about 15 feet to the spot where Vasil was standing. J.A. 20-21. Vasil jumped back several steps. J.A. 25. Vasil then approached the defendant, and asked him why he had driven at Vasil. J.A. 25. Vasil also asked the defendant for his drivers license and insurance card. J.A. 21. After smelling an alcoholic beverage on Lidster's breath and slurred speech as Lidster spoke, Vasil directed the Defendant to a side street on the north side of North Avenue. J.A. 25-26. Thereafter, the defendant was arrested for driving under the influence of alcohol.

At the defendant's bench trial, Detective Roy Newton testified that he was assigned to the corner of North Avenue and Craig to ensure that drivers did not skirt the roadblock. Pet App. 2a. Newton stated that officers at the roadblock directed several cars, including defendant's vehicle, to his location. Pet. App. 2a.

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[1] Except for Lidster, it is unknown from the record as to why such cars were chosen to be further detained, or whether any cars were further detained as a result of the drivers' answers to police questioning.

The Illinois Appellate Court found that the roadblock in question violated the Fourth Amendment's protections against unreasonable search and seizures. Pet. App. 23a-28a. Acknowledging that the roadblock herein was somewhat different than the one at issue in *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), the Illinois Appellate Court found that the ostensible purpose of the roadblock in Lidster was to seek evidence of "ordinary criminal wrongdoing". Pet. App. 26a.

Further, the Appellate Court found that there was no emergency present which might otherwise justify a checkpoint; rather, the Appellate Court found that this roadblock was merely routine investigative work that police do everyday. Pet. App. 26a.

Lastly, the Appellate Court noted that the State had presented no empirical evidence as to the effectiveness of such a checkpoint program. Pet. App. 28a.

The State then appealed to the Illinois Supreme Court. The Illinois Supreme Court also found that the roadblock at issue violated the Fourth Amendment. Pet. App. 1a-22a. It first found that the Lombard roadblock did not fall within the scope of the limited roadblocks which have heretofore been approved by the U.S. Supreme Court. Pet. App. 3a-7a. It rejected the State's argument that this roadblock was a 'special need', finding that the roadblock herein was indistinguishable from the general interest in crime control.

The Illinois Supreme Court found that there is no fundamental difference between roadblocks set up to gather information leading to the identification of *another* motorist as the perpetrator of a crime, and a roadblock designed to gather evidence against the detained motorist directly. Pet. App. 7a-8a.

The Illinois Supreme Court noted that, in Illinois in the year 2000 alone, there were 870 murders, 49,652 assaults, 25,168 robberies, 77,947 burglaries, 306,805 thefts, 55,222 motor vehicle accidents and 2899 arsons known to the police. The Illinois Supreme Court found that approving roadblocks for these serious crimes would lead to the troubling specter of roadblocks constantly adorning the streets of Chicago, Cook County, and the State of Illinois. Pet. App. 8a-9a.

Lastly, the Illinois Supreme Court rejected the State's argument that exigent circumstances existed, noting that the accident happened one week before the roadblock, and that there was no indication that the motorist remained in the vicinity or posed a further danger to residents. Pet. App. 9a-10a.

The Illinois Supreme Court concluded that the right of an individual to be free from unreasonable searches and seizures is an indispensable freedom, not a mere luxury, and that unless a line was drawn, the Fourth Amendment would do little to prevent intrusive searches and seizures from becoming a routine part of American life. Pet. App. 11.

SUMMARY OF THE ARGUMENT

The Illinois Supreme Court and the Illinois Appellate Court were both correct in finding that the roadblock held on August 30, 1997, in Lombard, Illinois violated the Fourth Amendment rights of the Respondent. The suspicionless seizure of motorists, in order to question them about an unsolved accident, constitutes ordinary crime detection and is therefore unlawful. There were no exigent

circumstances or national security concerns present which could justify the suspension of individualized suspicion requirements.

Historical evidence indicates that this type of roadblock would have been unlawful and unacceptable at the time of the framing of the Fourth Amendment.

Further, applying the balancing test articulated in *Brown v. Texas*, 443 U.S. 47 (1979) and *Edmond*, the interrogational checkpoint herein fails to pass constitutional muster because crime detection and control is not a legitimate first-prong governmental concern, nor does the magnitude of the public interest in solving a single accident outweigh the severity of intrusion on an innocent public. Motorists were stopped and detained for several minutes and then forced to undertake interrogation regarding their prior whereabouts and activities. Also, police officers were put into place to stop any drivers who tried to avoid the roadblock, thus rendering the seizure involuntary.

There was a complete lack of explicit guidelines in place to control officer discretion. No written guidelines existed for this type of checkpoint. Several motorists were taken to secondary staging areas for further detention without any specific reason being disclosed in the record. In addition, there was a lack of specific restraints in place to control the nature and degree of police questioning of citizens.

No statistical evidence was presented which could overcome constitutional concerns in order to establish the effectiveness of the checkpoint in question.

To allow checkpoints or roadblocks to be established for solving common crimes, however laudable the purpose,

would make roadblocks a way of life in America. Reasonable alternative means which would not infringe on the rights of innocent citizens are available, and therefore mass suspicionless seizures of citizens is not a lawful alternative.

Because no bright line can be drawn in this arena which could quell the potential proliferation of checkpoints, either vehicular or pedestrian, other than exigent circumstances and national security, the balance in favor of freedom and liberty outweighs the law enforcement's need for a checkpoint. Further, a bright line generally prohibiting checkpoints is also necessary to allow the police to know the legality of their activities with reasonable certainty, and to avoid endless litigation over checkpoints.

Lastly, to the extent that *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990) appears to authorize suspicionless seizures for common crimes known or unknown, it should be overruled.

ARGUMENT

I. APPLYING BASIC CONSTITUTIONAL PRINCIPLES TO THIS CASE CREATES A PRESUMPTION THAT THIS ROADBLOCK IS UNCONSTITUTIONAL.

Innocent citizens, suspected of absolutely no wrongdoing, should not be subject to involuntary seizures at roadblocks, in the absence of exigent circumstances, such as preventing an imminent terrorist attack, pursuing a fleeing felon, locating a kidnaped child, or some other ongoing serious criminal activity. The rights of the citizens to free, uninterrupted use of the public highways should

not be infringed by overreaching police investigative techniques, such as the roadblock employed here. The further expansion of roadblocks will seriously dilute the freedoms that the Constitution has granted to American citizens.

As stated in *Carroll v. United States*, 267 U.S. 132, 154, 45 S.Ct. 280, 285 (1925):

> "It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise."

This "right of free passage" remains as inviolate today as it was in 1925, and as it was in 1789 when the Bill of Rights was adopted. The right of free passage is an important and substantial liberty that the citizens of the United States enjoy. The Fourth Amendment is designed to protect this liberty from unreasonable Governmental interference.

A. The stopping of a vehicle constitutes a seizure under the Fourth Amendment, and a suspicionless seizure is presumptively unconstitutional.

It remains without doubt that the stopping of a vehicle at a roadblock or checkpoint is a seizure which falls under the protections of the Fourth Amendment. See, e.g. *City of Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000); *United States v. Martinez-Fuerte*, 428 U.S. 543, 556 (1976).

The Fourth Amendment requires that searches and seizures be reasonable. See, e.g. *Edmond*, 531 U.S. at 37. A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing. *Chandler v. Miller*, 520 U.S. 305, 308, 117 S.Ct. 1295, 137 L.Ed.2d 513 (1997).

The indiscriminate stopping of individuals who are not suspected of wrongdoing, who are not being checked for roadside safety, and who are not crossing the external borders of the United States or entering the ports thereof, is presumptively a violation of the Fourth Amendment.

II. THE FRAMERS WOULD HAVE CONSIDERED THE ROADBLOCK IN THIS CASE TO BE A VIOLATION OF THE FOURTH AMENDMENT

In *Carroll v. United States*, this Court stated that:

> "The Fourth Amendment is to be construed in light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens." 267 U.S. at 149.

"In deciding whether a challenged governmental action violates the (Fourth) Amendment, the Court takes care to inquire whether the action was regarded as an unlawful search and seizure when the Amendment was framed." *Florida v. White*, 526 U.S. 559, 563 (1999). See also, *Atwater v. City of Lago Vista*, 532 U.S. 318, 326 (2001).

A review of the history and development of the Fourth Amendment establishes that the Framers would have found suspicionless seizures of citizens at interior roadblocks for the purposes which occurred herein, to be abhorrent, and the exact kind of Government conduct that the Fourth Amendment was designed to prevent.

The Government acknowledges that it would be unconstitutional to stop an individual without reasonable suspicion on the highways of the United States. See, e.g. *Terry v. Ohio*, 392 U.S. 1 (1968). However, the Government herein argues that it is ***not*** unconstitutional to stop a large group of individuals without any suspicion on that same highway, so long as everyone's individual right is equally violated. Their argument is devoid of logic.

It did not matter to the Framers whether a large group or a single individual was seized without suspicion – both were considered unreasonable. Nor does an individual citizen feel that his or her rights are any less violated simply because others are seized without suspicion also. "The view that mass, suspicionless searches, however evenhanded, are generally unreasonable remains inviolate in the criminal law enforcement context . . ." *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 671 (1995); *Ybarra v. Illinois*, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979).

> "More important, there is no indication in the historical materials that the Framers' opposition to general searches stemmed solely from the fact that they allowed officials to single out individuals for arbitrary reasons, and thus that officials could render them reasonable simply by making sure to extend their search to *every* house in a given area or to *every* person in a given group. See *Delaware v. Prouse*, 440 U.S. 648, 664, 99 S.Ct. 1391, 1401-1402, 59 L.Ed.2d 660 (1979) (REHNQUIST, J., dissenting) (referring to this as the "'misery loves company'" theory of the Fourth Amendment)". *Vernonia*, 515 U.S. at 670.

If the Framers intended that something less than individualized suspicion could be employed when persons were traveling in 'highly mobile' devices, they had ample opportunity to express that intention, yet they never did. Carriages, carts, vessels and drays were commonly in use and highly regulated during the 18th century.[3] Yet Petitioner State of Illinois and their *amici* fail to identify any Colonial Acts, laws or other historical evidence which lend support for employment of suspicionless seizures of carriages or other vessels at roadblocks during the Framers' era.

[3] See, e.g., 30 Geo. II, ch. 22, Sec. 5, 13, 22 Statutes at Large 107-108, 111 (1757) (authorizing the arrest of individuals obstructing "publick streets, lanes or open passages" with "pipes, butts, barrels, casks or other vessels" or an "empty cart, car, dray or other carriage"); 27 Geo. II, ch. 16, Sec. 7, 21 Statutes at Large 188 (1754) (authorizing arrest of negligent carriage drivers); *Atwater*, 532 U.S. at 335.

In the late spring of 1776, prior to the Declaration of Independence, the Virginia Legislature adopted the following:

> "X. That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted." Va. Const. Of 1776, art. X (Decl. Of Rights) as quoted in *The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins*, p. 235, n. 122 (6.3.1.8) (Neil H. Cogan ed., 1997)

Maryland, Delaware, and North Carolina soon adopted similar provisions. Thomas Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 674-676 (1999).

Shortly after the Declaration of Independence was signed, Pennsylvania adopted the following search and seizure provision:

> "That the people have a right to hold themselves, their houses, papers, and possessions free from search and seizure; and therefore warrants without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are contrary to that right, and ought not to be granted." Pa. Const. Of 1776, art. X (Decl. Of Rights) as quoted in *The Complete Bill of Rights: The Drafts, Debates, Sources,*

and Origins, p. 235 (6.3.1.6a) (Neil H. Cogan ed., 1997).

Following the States' adoptions, the Fourth Amendment was adopted by Congress in 1789 and ratified by the States in 1791 as one of the provisions of the Bill of Rights.

The Fourth Amendment arose out of an English and colonial history of general searches and seizures without any specific or individualized cause. See generally, Tracey Maclin, *The Complexity of the Fourth Amendment: A Historical Review*, 77 B.U.L.Rev. 925, 939-950 (1998).

It is from this history of abusive writs of assistance and general warrants without cause that the Framers desired to enact a prohibition against warrantless searches and suspicionless seizures. One example is a portion of the Collection Act of 1789, which provided that a warrantless search of ships could only occur if customs officials had reasonable suspicion that taxable property was concealed. Morgan Cloud, *Searching Through History; Searching for History*, 63 U. Chi. L. Rev. 1707, 1740-41 and note 118 (1996) (reviewing William John Cuddihy, The Fourth Amendment: Origins and Original Meaning).

In previous decisions, this Court noted that legislation passed by Congress from 1789 to 1799 applied probable cause and warrant requirements to customs officials before ships or vessels could be searched, and that these laws were a reflection of the Framers' intent. See *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999); *Carroll*, 267 U.S. at 150-153.

From a review of the laws in effect during and immediately preceding the adoption of the Fourth Amendment,

it is clear that outside of limited customs statutes, causeless seizures of carriages, vessels, persons, papers or possessions was banned and unlawful in many of the original colonies. Thus, the roadblock employed in the instant case would have been deemed unlawful under the original colonies' laws at the time of the framing of the Fourth Amendment. See e.g., *Carroll*, 267 U.S., at 150-151, 154, 45 S.Ct., at 284, 285; cf. Clancy, *The Role of Individualized Suspicion in Assessing the Reasonableness of Searches and Seizures*, 25 Mem.St.U.L.Rev. 483, 489 (1994) ("While the plain language of the Amendment does not mandate individualized suspicion as a necessary component of all searches and seizures, the historical record demonstrates that the framers believed that individualized suspicion was an inherent quality of reasonable searches and seizures.")

A suspicionless seizure of citizens in order to make intrusive, interrogational inquiries of admittedly innocent motorists, constitutes the same type of governmental harassment and abuse occasioned by the use of General Warrants and Writs of Assistance that our Framers so vehemently fought to terminate.

III. THE ROADBLOCK IN THIS CASE IS CONTRARY TO EVERY ROADBLOCK OPINION WRITTEN BY THIS COURT TO DATE.

> "The needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards." *Almeida-Sanchez v. United States*, 413 U.S. 266, 273 (1973).

During the more than 200 years since the Fourth Amendment to the United States Constitution was enacted, the United States Supreme Court has rarely approved suspicionless roadblocks. In *Martinez-Fuerte*, *supra*, the Supreme Court recognized the right of our country to protect its exterior borders from the smuggling of illegal goods or persons with fixed border checkpoints. This decision was merely a reflection of the historical "border" stops which were employed with limitation during the late 1700's under Customs statutes. See *Houghton*, 526 U.S. at 300. The Court allowed this exception to the Fourth Amendment because it has "long recognized the distinction between stopping a vehicle without cause, in the hope of finding evidence of criminal activity, and stopping persons 'crossing an international boundary because of national self-protection . . .'". *Edmond*, 531 U.S. at 17, citing to *Carroll*, 267 U.S. at 153-54.

In *United States v. Ortiz*, 422 U.S. 891 (1975), this Court invalidated a traffic checkpoint designed to locate illegal aliens which was too far removed from the borders; whose statistical effectiveness was unsubstantiated; and where there was too great of a discretion left to police officers due to a lack of specific guidelines. Like *Ortiz*, the roadblock here had unsubstantiated effectiveness and a lack of specific guidelines.

In *Sitz*, this Court approved of its only interior suspicionless roadblock, in order to regulate traffic safety and to check the sobriety of drivers. The Court in *Sitz* relied in part on the empirical data that 1.6 drivers passing through a checkpoint were arrested for alcohol impairment. Here, there is a complete absence of empirical data as to whether even one motorist stopped amongst one

thousand would have any knowledge regarding the event upon which the roadblock was formed.

The roadblock in this case isn't intended to prevent hit-and-run accidents or any other future crime; it was employed solely in an attempt to solve a singular, isolated incident – which makes its purpose one of general law enforcement.

Sitz has been criticized as opening the door to further suspicionless seizures of the public. "By holding that no level of suspicion is necessary before the police may stop a car for the purpose of preventing drunken driving, the Court potentially subjects the general public to arbitrary or harassing conduct by the police." *Sitz*, 496 U.S. at 458 (J. Brennan, dissenting). Law enforcement's extension of the use of roadblocks to cases such as here makes Justice Brennan's words all the more prophetic.

This Court previously has held that there was no empirical data to suggest that roving roadblocks were an effective means of promoting roadside safety. *Prouse*, *supra*. There, in disapproving suspicionless stops, this Court stated "that the number of licensed drivers who will be stopped in order to find one unlicensed operator will be large indeed." *Prouse*, 440 U.S. at 659-660.

In *Edmond*, this Court disapproved of roadblocks whose primary function was to detect ordinary evidence of wrongdoing. *Edmond* declined to suspend the usual requirement of individualized suspicion where police seek to employ a checkpoint for the ordinary enterprise of investigating crimes. *Edmond*, 531 U.S. at 44. The Illinois Supreme Court was correct in this case when it found that the roadblock was set up for that exact same purpose – investigating crime. Searching for evidence (which includes

witnesses) to possible crimes is the daily function of every police detective. Although such efforts are absolutely laudable, they can in no way supercede the Fourth Amendment.

To put it bluntly, the Lidster roadblock is nothing more than the type of ordinary crime investigation prohibited under *Edmond*. The Lombard roadblock was set up for one reason only – "to work out a fatal hit-and-run accident". J.A. 15. Further, common sense dictates that the Lombard roadblock was designed not only to find witnesses – it was equally designed to find that driver – a general law enforcement purpose. It is as equally likely that the suspect would pass through this roadblock as it is that a witness would so pass. Thus, the claimed 'purely innocent motives' of the Government and the police (i.e. to make contact with witnesses but not the suspect) should be looked upon with circumspect.[4] The roadblock herein, as will later be argued, also contained an interrogational aspect.

One logical (but unspoken) aspect of this roadblock was the possibility that the vehicle in question would also pass through. Thus, its programmatic purpose is prohibited under *Edmond*. Both parties herein agree that the context of "general crime control" prohibited by *Edmond* "encompasses instances where, as in *Edmond* itself, police officers intend to detect whether individuals actually passing through the checkpoint happen to be engaged in unlawful activity." Pet. Brief, p. 10.

[4] Even sixth-grade amateur sleuths know that it is "the *criminal* who returns to the scene of the crime" – not the witnesses.

Common sense dictates that the number of drivers who will be stopped by the kind of roadblocks used herein, in order to find possibly one witness to an accident (if anyone *other* than the suspect saw anything), will be as large and even more ineffective than the suspicionless stops disapproved by this Court in *Prouse, Edmond,* and *Ortiz*.

The approval of roadblocks *inside* the borders of the United States (as previously rejected in *Ortiz*), not for regulation of vehicular travel (as suggested by *Prouse*), not to deter possible 'slaughters on the highways' by drunk drivers (as approved in *Sitz*), but rather to make intrusive interrogational inquiries, is without precedent.

Permitting the use of these kinds of 'checkpoints' would be the modern day equivalence of a General Warrants.

IV. THE ROADBLOCK HEREIN FAILS TO PASS THE *BROWN* AND *EDMOND* BALANCING TESTS. THE SIGNIFICANT INTRUSIONS ON THE MOTORISTS' LIBERTIES, COUPLED WITH THE LACK OF SPECIFIC RESTRAINTS ON POLICE DISCRETION, OUTWEIGH THE GRAVITY OF THE PUBLIC'S CONCERN IN THIS MATTER.

In the majority of cases that fall within the class of 'minimally intrusive' search and seizures, this Court has generally still required the government to prove that it had reasonable suspicion. See, e.g. *Prouse*, 440 U.S. at 661; *United States v. Brignoni-Ponce*, 422 U.S. 873, 882-883 (1975); *Terry*, 392 U.S. at 27. In roadblock cases, however, this Court has applied a balancing test involving "the

gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty". *Brown v. Texas*, 443 U.S. 47, 51, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979).

A. This roadblock fails the *Brown* test because crime detection is not a legitimate first-prong concern.

The *Edmond* decision implicitly held that the first prong of the *Brown* test could never be satisfied by reference to general crime control, lest the exceptions would inevitably swallow up the general rule that vehicle stops require "some measure of individualized suspicion". *Edmond*, 531 U.S. at 42.

Edmond recognized that the gravity of the public concern alone could not be dispositive without considering the nature of the interests threatened and their connection to law enforcement. *Id.* at 42-43. Where the particular concerns or interests involved primarily the pursuit of crime control, the *Edmond* Court refused to apply the remainder of the *Brown* balancing test, instead declaring the checkpoint unconstitutional.

The solving of a single accident with a single victim is not a legitimate first-prong governmental interest under *Brown*, because solving a stale crime is not readily distinguishable from the general interest in crime control previously rejected in *Edmond*. See also *Prouse,* 440 U.S. at 659, n.18. (noting that "controlling auto thefts" was not a legitimate first-prong interest).

Even assuming *arguendo* that some crime concerns are legitimate first-prong interests under *Brown*, the gravity of the public concerns served by the seizure in this case, i.e. solving a single accident with a single victim, is not of such a magnitude as to justify a roadblock of a major city thoroughfare.

Although petitioner and their *amici* refer to the incident which generated this roadblock as a 'homicide', it remains open to question whether the death of the pedestrian in this case was even the result of criminal conduct. Although the motorist failed to remain at the scene **after** the accident, the Government has failed to establish that actual incident itself was anything other than purely accidental. Further, failure to remain at the scene on an accident involving death can be a mere misdemeanor offense. 625 ILCS 5/11-401(a). Yet, upon this paucity of facts, the government feels justified in shutting down an entire major thoroughfare and intruding upon every motorist who sought to pass through it.

North Avenue, Lombard, Illinois (the street where the checkpoint occurred), is a heavily traveled state highway (North Avenue is also known as State Highway 64). Between 43,600 and 44,400 vehicles traveled on North Avenue through Lombard on a daily basis in 2002, according to the Illinois Department of Transportation.[5] Even at midnight, one could surmise that stopping every vehicle would have a significant impact upon the flow of traffic.

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[5] Illinois Dept. of Transportation, Average Daily Traffic Count, Illinois Highway 64, Lombard, Illinois (2002).www.dot.state.il.us; http://gis.dot.state.il.us/output/ADTMainMap_ARCIMS191217807122.gif.

Whereas *Sitz*' justification for suspicionless seizures rested on saving lives by preventing a slaughter on the highways, which the Court found statistically a large enough problem to overcome Fourth Amendment concerns, the State has failed to prove that this roadblock will prevent any impending slaughter. It is designed for one purpose – to solve one singular and alleged crime against one singular victim one week after it occurred. The potential crime involved herein (leaving the scene of an accident), albeit serious in its consequences, is not nearly as "substantial" numerically as controlling the flow of illegal aliens and smuggling found in *Martinez-Fuerte*, 428 U.S. at 556-557 n.12, nor is it of the "magnitude" of the State's interest in combating drunk driving found in *Sitz*, 496 U.S. at 451.

Solving a hit-and-run accident, albeit laudable, cannot justify the investigative checkpoint used here, or there would essentially be no limit to the use of and breadth of checkpoints on the highways, streets, and sidewalks of America.

Nor can it be argued by the State that the solving of this one possible crime is of greater public significance than controlling the flow of illicit narcotics for which roadblocks were rejected by this Court in *Edmond*.

Thus, the Government interest at stake here is small when measured by the *Sitz* 'magnitude' test or the *Martinez-Fuerte* 'substantiality' test.

Nor is there any evidence to establish "the degree to which the seizure advances the public interest", another factor in *Brown*. As elucidated in *Edmond* ("The constitutionality of such checkpoint programs still depends on a balancing of the competing interests at stake and the

effectiveness of the program", *Edmond*, 531 U.S. at 47), the Government has failed to supply any statistical support for the effectiveness of this type of checkpoint. Instead, the Government cites to a few anecdotal stories in local newspapers, none of which even indicate that any of those crimes were actually *solved* as a result of the checkpoints.

B. The length of detention was several minutes or greater for each motorist and the degree of intrusion on the motorists was significant.

On August 30, 1997 at about midnight, every eastbound motorist who drove down North Avenue in Lombard, Illinois was stopped without suspicion and asked whether they had been in the vicinity one week ago, and whether they had seen anything suspicious. J.A. 18, 23.

According to Detective Ray Vasil, the police officer who stopped and confronted Robert Lidster, the Respondent, at this roadblock, there were virtually no guidelines in effect for this roadblock. J.A. 22. Mr. Vasil was under orders to stop every car and hand them a flyer. Vasil would also ask each individual whether they were there one week ago, and whether they had seen anything. J.A. 18, 23. At the time, the police were looking for a 1980-1986 Ford "Full Size" pick-up truck or Ford Bronco with damage to its right front headlight area. J.A. 9.

There were three lanes of traffic being stopped and interrogated at the roadblock. The record is silent as to what action these officers would or did take if they observed a vehicle matching the above description, and there were no guidelines in effect for the officers to follow if such an event occurred.

Detention is not measured by the length one is face-to-face with a police officer; it is measured by the length of time that a person's liberty is curtailed. Although the *actual* police contact for most drivers may have been 10 to 15 seconds, there were also 10 to 15 vehicles stopped in each lane. J.A. 20, 24. Therefore, the length of *detention*, even for the least detained motorist was several minutes as one waited for his or her turn to be interrogated. Further, the record shows that officers directed several cars, including Defendant's vehicle, to a secondary staging area without any explicit constraints on time. Pet. App. 2a. The length of detention for those moved to secondary staging areas is unknown, but certainly in excess of the aforementioned motorists.

The Government uses the sugar-coated term "informational checkpoint" to describe their actions in Lombard, Illinois on the night of Robert Lidster's arrest. The correct term for this event would more appropriately be labeled as an "interrogational roadblock".

At this roadblock, police were subjecting motorists to questions of a personal nature unrelated to traffic safety. These questions were of the same type that would be put to possible suspects during general crime investigations – "where were you on the night in question?"

The questioning initiated by the police officers and posed to the seized motorists at this roadblock fall squarely within the definition of "interrogation". In *Miranda*, the Court referred to "interrogation" as actual "questioning initiated by law enforcement officers." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Clearly, the questions herein, being given to a motorist who could be either a passerby, a potential witness, or a suspect (since the police had no

ability to distinguish amongst these categories) constituted "words . . . on the part of police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1990).

Edmond explicitly rejected the use of roadblocks whose primary purpose was interrogation and inspection:

> "We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint *primarily* for the ordinary enterprise of *investigating* crimes. We cannot sanction stops justified only by the generalized and ever-present possibility that *interrogation* and inspection may reveal that any given motorist has *committed* some crime." *Edmond*, 531 U.S. at 44. (Emphasis added).

Amicus United States argues in their brief that the detention here was no different than those approved in *Terry v. Ohio* (See United States amicus brief, p. 24 fn.14). Nothing could be farther from the truth. In *Terry*, the Court found that brief questioning was not a seizure where there was no restraint of the citizen's right to walk away. *Terry*, 392 U.S. at 16. Here, the police used emergency lights to halt all vehicles at a roadblock, and set up a secondary patrol officer whose primary function was to ensure that *nobody* could 'skirt' the roadblock. Pet. App. 2a. The motorists herein were being involuntarily stopped, in the presence of up to a dozen emergency vehicles and a multitude of police personnel, without the opportunity to "walk away". The questioning at this roadblock was clearly

compulsive and was certainly carried out in a police-dominated environment.[6]

The nature of the contact taking place at the roadblock clearly makes this roadblock far more intrusive than the brief perusal of one's condition of sobriety in *Sitz*. As in *Edmond*, the people who were stopped at the Lidster roadblock were treated like ordinary suspects – they were involuntarily stopped by police using emergency vehicles, subsequently approached, and questioned regarding their whereabouts and activities. Depending on their answers or behavior, several were then sent to secondary areas for further intrusions.

The degree of intrusion and the interrogational aspect of this roadblock is separate and distinct from the 'purely informational' checkpoint described by *amici* for the Petitioner, whereby a motorist drives into a National Park Forest and must stop to pay an admission fee and is then informed of safety issues, regulations, closing hours, fire hazards, use of trails, etc. (Amicus Brief for the United States, p. 11 fn.1) Here, the police were not *giving* information – they were gathering it. A purely 'informational' checkpoint would not ordinarily involve questioning motorists about their activities the week before, or whether they were previously "at the scene of the crime".

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[6] During custodial interrogation, the pressure on the suspect to respond flows not from the threat of contempt sanctions, but rather from the "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Pennsylvania v. Muniz*, 496 U.S. 582, 597 fn.10 (1990) citing to *Miranda v. Arizona*, 384 U.S. 436, 467, 86 S.Ct. 1602, 1624, 16 L.Ed.2d 694 (1966).

The questioning here is identical to traditional crime detection, and not even remotely similar to what one might be asked when entering a National Park Forest. Most importantly, in National Parks, no motorist is seized by stopping voluntarily to pay an admission, and they are always free to turn around without any consequences before they arrive at the toll plaza.

C. There was a complete lack of guidelines in place which would constrain police discretion.

"The principal protection of Fourth Amendment rights at checkpoints lies in appropriate limitations on the scope of the stop." *Martinez-Fuerte*, 428 U.S. at 566-567. Roadblock seizures are consistent with the Fourth Amendment if they are "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Brown v. Texas*, 443 U.S. 47, 51, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979).

The roadblock in this case had a complete lack of constraints on officer conduct. There were no guidelines as to the specific questions which could be asked; as to whether the officers could ask follow-up questions; as to what the officers should do if a motorist refused to answer questions; as to when a motorist should be directed to a secondary staging area; and as to whether drivers should or shouldn't be further detained if they provided information of possible value.

In previous cases, this court identified the use of specific guidelines at checkpoints as a prerequisite to acceptable checkpoints, in order to limit officer discretion. "The officer's conduct in (the *Prouse* case) was unconstitutional primarily on account of his exercise of 'standardless

and unconstrained discretion.'" *Edmond*, 531 U.S. at 39 (insert added); see also *Ortiz*, 422 U.S. at 895-896 (invalidating a roadblock stating "moreover we are not persuaded that the checkpoint limits to any meaningful extent the officers' discretion in deciding which cars to search".) See also *I.N.S. v. Delgado*, 466 U.S. 210, 222 (1984) (explaining that the checkpoints in *Martinez-Fuerte* were constitutional because, amongst other things, "they were public and regularized law enforcement activities vesting limited discretion in officers in the field.").

The roadblock herein is unconstitutional because the guidelines left virtually unfettered discretion to the officers in the field, and because just like in *Ortiz*, there were no limitations on which motorists could be further detained by the police at the secondary staging area of the roadblock.

D. Reasonable alternatives to the use of a roadblock existed which could have accomplished the same goals.

The Petitioner's argument that there is "an absence of practical alternatives", as noted in the balancing tests of *United States v. Ross*, 456 U.S. 798, 806 (1982) and *Brignoni-Ponce*, 422 U.S. at 881, is also incorrect. Reasonable practical alternatives which the police could have used in lieu of a roadblock included:

a) informational road signs seeking information (Amber alerts);

b) placing flyers on cars parked in nearby businesses[7];

c) using the media to publicize the need for witnesses; or

d) simply monitoring traffic for vehicles that matched the description and performing lawful investigations only on those vehicles.

The only significant difference between these reasonable practical alternatives and the roadblock in this case is that the roadblock forces a person to involuntarily stop and submit to police questioning, whereas the other methods allow the person to retain 'the right to be let alone' as coined by Justice Brandeis in *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J. dissenting).

Even though the choice among reasonable enforcement alternatives is ordinarily left with local government officials, courts must not "blindly defer to whatever enforcement techniques are chosen by officials" because courts must analyze these techniques to ensure that they are, in fact, reasonable in the context of the Fourth Amendment as stated by the Illinois Appellate Court in their opinion on this matter. Pet. App. 28a. The government bears the burden of justifying the method employed where it implicates Fourth Amendment interests. *Terry v. Ohio*, *supra*.

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[7] The testimony at the motion to suppress revealed that there was a post office whose shift ended within 30 minutes of the hit-and-run, and several industrial parks and businesses open in the area at that time. (J.A. 28-29).

The government has failed to establish the absence of practical alternatives which could possibly support the suspension of the rights and the liberties of citizens that occurred in this case.

V. PUBLIC POLICY, AND THE FOURTH AMENDMENT, SHOULD FORBID THE USE OF ROADBLOCKS EXCEPT FOR NATIONAL SECURITY AND EXIGENT CIRCUMSTANCES. TO THAT EXTENT, *SITZ* SHOULD BE OVERRULED.

> "The Fourth Amendment was designed not merely to protect against official intrusions whose social utility was less as measured by some 'balancing test' than its intrusion on individual privacy; it was designed in addition to grant the individual a zone of privacy whose protections could only be breached where the 'reasonable' requirements of the probable-cause standard were met. Moved by whatever momentary evil has aroused their fears, officials – perhaps even supported by a majority of citizens – may be tempted to conduct searches that sacrifice the liberty of each citizen to assuage the perceived evil. But the Fourth Amendment rests on the principle that a true balance between the individual and society depends on the recognition of 'the right to be let alone – the most comprehensive of rights and the right most valued by civilized men.' (Citations omitted)". *Sitz*, 469 at 459-460 (Brennan, J., with whom Marshall, J. joins, dissenting).

Approval of interrogational checkpoints such as here would virtually extinguish the 'right to be let alone' in towns large and small. "Checkpoints" could be set up within one week or longer of every so-called serious crime.

With the substantial variety of offenses that are considered felonies (in Illinois), including retail theft over $150.00 (720 ILCS 5/16A-10(2), theft of wireless services over $300.00 (720 ILCS 5/16F-3), unlawful sale of a household appliance with a missing manufacturer's identification number (720 ILCS 5/16C-2) *et cetera*, there would be no conceivable limitation on what types of crimes *wouldn't* justify the use of checkpoints.

The same arguments used by Petitioner and their *amici* in support of the Lidster checkpoint could equally be advanced for any mass suspicionless search or seizure and for any potential crime investigation. Under these facts, every person, whether a pedestrian or motorist, could be involuntarily seized in any public place and briefly interrogated, so long as some type of serious crime had taken place at that location in the not-too-distant past.

If the Court allows checkpoints, there will be no capably defined limits under which police could know with some sense of certainty the lawful boundaries of their activities. Every checkpoint would be the subject of infinite litigation and diverse judicial opinion.

In finding that this roadblock was a violation of the Fourth Amendment, the Illinois Supreme Court stated:

> "Lastly, an exception for informational roadblocks has the potential to make roadblocks 'a routine part of American life', *Edmond*, 531 U.S. at 42, 121 S.Ct. at 454, 148 L.Ed.2d at 344. In 2000, 870 murders, 49,652 assaults, 25,168 robberies, 77,947 burglaries, 306,805 thefts, 55,222 motor vehicle thefts, and 2,899 arsons were known by police to have been committed in Illinois. J. Fitch, 2001 Illinois Statistical Abstract 764 (16th ed. 2001). Of those, 706 murders, 31,655 assaults,

21,691 robberies, 41,464 burglaries, 168,890 thefts, 45,083 motor vehicle thefts, and 1,525 arsons were known by police to have been committed in Cook County. J. Fitch, 2001 Illinois Statistical Abstract 764 (16th ed. 2001). In the City of Chicago, there were 627 murders, 26,660 assaults, 19,449 robberies, 28,401 burglaries, 105,728 thefts, 35,570 motor vehicle thefts and 1,106 arsons. J. Fitch, 2001 Illinois Statistical Abstract 766 (16th ed. 2001). Should the police have been allowed to set up roadblocks to obtain information from potential witnesses for each murder? What of a robbery, an aggravated criminal sexual assault, an arson or any other serious crime? According to the State, for a period of at least a week after each crime, police could set up roadblocks with the specific purpose of making inquiries of persons who were possibly witnesses to a crime. The troubling specter then arises that the streets of Cook County, or at least the streets of Chicago, would be adorned with roadblocks, an outcome clearly unacceptable under *Edmond*." Pet. App 8a-9a.

It is equally likely that the above stated crime statistics hold virtually true for all of America's urban centers. Riddling the United States of America with roadblocks for every type of 'serious' crime, could lead this country into a state of police lockdown.

There can be no doubt that the landscape of freedom in America will significantly change if interrogational checkpoints are deemed acceptable by this Court under the circumstances presented herein.

Public policy would best be served by revisiting and overruling *Sitz*, and declaring that all roadblocks, other than those used for exigent circumstances[8] and for national security[9], be declared unconstitutional. Even though driving under the influence is an extremely serious public concern, traditional methods of detection, such as monitoring the operation of the vehicle, make roadblocks there an unnecessary evil.

Stopping drivers at checkpoints to determine if they are committing a crime, have committed a crime, or have even witnessed a crime, runs counter to the principles of the Fourth Amendment to the United States Constitution, otherwise known as the Bill of Rights.

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[8] An impending attack, a fleeing felon, a police chase, a kidnaped child, or a biological epidemic are examples of the type of exigent circumstances where roadblocks could be acceptable.

[9] Border checkpoints (i.e. *Martinez-Fuerte*), customs checkpoints, government building and airport checkpoints are all areas where national security concerns (as recognized in *Carroll*) are exceptions to normal Fourth Amendment protections.

CONCLUSION

For all of the foregoing reasons, the decision of the Illinois Supreme Court should be affirmed.

Respectfully Submitted,

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Supreme Court, U.S.
FILED
SEP 17 2003
CLERK

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No. 02-1060

In the Supreme Court of the United States

ILLINOIS, PETITIONER,

v.

ROBERT S. LIDSTER, RESPONDENT.

On Writ of Certiorari to the Supreme Court of Illinois

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REPLY BRIEF FOR THE PETITIONER

The central question here is whether the Lombard informational checkpoint is *per se* invalid under *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). When he finally arrives at that question, respondent argues in the affirmative, reasoning that the checkpoint's purpose — obtaining information to solve an unsolved hit-and-run accident — was related to law enforcement. Resp. Br. 15-18. This argument disregards this Court's caveat that *Edmond* did not adopt a "non-law enforcement primary purpose test." 531 U.S. at 44 n.1. Moreover, respondent neglects the crucial distinction between checkpoints used as a dragnet to detect hitherto unknown crimes being committed by the motorists themselves, which are governed by *Edmond*, and checkpoints used to seek information about known but unsolved crimes that had been committed by others, which are not. See Pet. Br. 8-14.

Having failed to establish that *Edmond* governs informational checkpoints, respondent next contends that the Lombard checkpoint does not satisfy the reasonable factors in *Brown v. Texas*, 443 U.S. 47 (1979). Resp. Br. 17-28. In so doing, respondent incorrectly asserts that solving a hit-and-run fatality is not a weighty public concern, distorts the character and purpose of the checkpoint, and ignores precedent in suggesting that there were alternatives available to the Lombard police. Respondent's contentions do nothing to undermine our position (Pet. Br. 14-21) that the checkpoint satisfies the *Brown* reasonableness factors.

In the end, respondent is left with no choice but to urge the overruling of *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990). Resp. Br. 6-13, 28-31. This tacitly and correctly concedes that the Lombard checkpoint passes muster under this Court's roadblock precedents, and that respondent can prevail only if this Court alters its Fourth Amendment jurisprudence.

Moreover, respondent fails to establish that *Sitz* was wrongly decided, let alone that *Sitz* presents some special justification that would warrant departing from *stare decisis*.

I. The Lombard Checkpoint Is Not Invalid Under *City of Indianapolis v. Edmond*.

Edmond teaches that, absent exigent circumstances not present here, the Fourth Amendment invalidates suspicionless roadblocks whose primary purpose is "general crime control" or "detect[ing] evidence of ordinary criminal wrongdoing." 531 U.S. at 41, 47. Our initial brief demonstrated that *Edmond*'s prohibition reaches only those roadblocks whose purpose is to detect hitherto unlawful activity by the motorists themselves, not roadblocks designed to seek information about known but unsolved crimes committed by others. Pet. Br. 8-14.

Our conclusion follows from *Edmond* itself, which held:

> We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops justified only by the *generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime*.

531 U.S. at 44 (emphasis added). As this passage makes clear, the Court's concern extended only to roadblocks intended to reveal ongoing criminal activity by the motorists themselves. See Pet. Br. 9-11; Brief for the United States as *Amicus Curiae* 18-21 ("U.S. Br."); *Edmond*, 531 U.S. at 44 (Fourth Amendment prohibits program "under which authorities might simply stop cars as a matter of course to see if there just happens to be a felon leaving the jurisdiction"). Our conclusion also follows from the context against which *Edmond* was decided, as the Court's checkpoint cases all involved attempts

to detect whether the motorists themselves were engaged in unlawful activity. See Pet. Br. 11-12. Finally, our conclusion that *Edmond* does not govern informational checkpoints follows from the settled principle that law enforcement officials attempting to solve crimes may and should seek assistance from citizens. See Pet. Br. 12-13; U.S. Br. 21-22.

Respondent does not address, let alone rebut, any of these points. Rather, he simply parrots the court below in asserting that the Lombard roadblock "is nothing more than the type of ordinary crime investigation prohibited under *Edmond*." Resp. Br. 16. Likewise, respondent's *amici* contend that "the objective of identifying potential witnesses to a prior criminal offense or vehicular crime * * * is synonymous with an interest in 'the ordinary enterprise of investigating crimes.'" Brief for the National Association of Criminal Defense Lawyers et al. as *Amici Curiae* 18 ("NACDL Br.").

Respondent and his *amici* offer no support for their assertions, which necessarily rest on the premise that *Edmond* invalidates all roadblocks whose primary purpose is somehow related to law enforcement. That premise is inconsistent with *Edmond* itself, which emphatically rejected the notion that it had adopted a "non-law-enforcement primary purpose test" for roadblocks. 531 U.S. at 44 n.1. *Edmond* recognizes that there are two categories of law-enforcement-related roadblocks: those that serve "the general interest in crime control," which are *per se* invalid, and those that serve some other law-enforcement purpose, which are not. See *id.* at 42 (distinguishing between permissible and impermissible law enforcement purposes). The Lombard informational roadblock, which sought information about a past unsolved crime committed by others, falls within the second category.

Amici further contend that *Edmond* prohibits all roadblocks except those falling within a "special needs exception."

NACDL Br. 19. This ignores the Court's recognition, both before and after *Edmond*, that the Fourth Amendment "special needs" doctrine does not apply to checkpoints. See *Ferguson v. City of Charleston*, 532 U.S. 67, 83 n.21 (2001) ("the Court explicitly distinguished the cases dealing with checkpoints from those dealing with 'special needs'"); *Sitz*, 496 U.S. at 450 (rejecting contention that "there must be a showing of some special governmental need 'beyond the normal need' for criminal law enforcement before a balancing analysis is appropriate"). Indeed, the "special needs" doctrine is essentially a "non-law-enforcement purpose" test. See *Ferguson*, 532 U.S. at 79 (a "special need" is "one divorced from the State's general interest in law enforcement"). Thus, in rejecting a "non-law-enforcement primary purpose test" for roadblock cases, 531 U.S. at 44 n.1, *Edmond* necessarily rejected the "special needs" test as well.

Finally, respondent contends that even if *Edmond* is limited to roadblocks designed to detect unlawful activity by the motorists themselves, the Lombard checkpoint still would fail Fourth Amendment scrutiny. The reason, respondent asserts, is that "the Lombard roadblock was designed not only to find witnesses – it was equally designed to find th[e] driver" involved in the hit-and-run. Resp. Br. 16.

Respondent's factual premise — that the purpose of the Lombard checkpoint was to find the hit-and-run perpetrator — finds no support in the record. During the evidentiary hearing before the trial court, the Lombard detective testified that he was looking only for witnesses, not for the driver actually involved in the hit-and-run. J.A. 15, 18, 24. The trial court credited that testimony, expressly finding that the purpose of the roadblock was "to determine if any witnesses at that same time of night of the same day would have seen anything." J.A. 30. And the Illinois Supreme Court, while reversing the trial court's legal conclusion, accepted the trial court's factual finding

regarding the checkpoint's purpose. Pet. App. 7a-8a, 10a. Given this record, respondent may not seek affirmance on the ground that the Lombard checkpoint's primary purpose was to find the perpetrator. See *Hernandez v. New York*, 500 U.S. 352, 366 (1991) ("in the absence of exceptional circumstances, we would defer to the state-court factual findings, even when those findings relate to a constitutional issue").

In sum, because the primary purpose of the Lombard checkpoint was to find witnesses to a past but unsolved crime, it is not *per se* invalid under *Edmond*. This result is compelled not only by precedent, but also by common sense. As the Court recently confirmed, "[l]aw enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen." *United States v. Drayton*, 536 U.S. 194, 200 (2002). A roadway is a public place, and an officer oftentimes can put questions to passing motorists and hand them flyers only if they bring their vehicles to a halt. See *State v. Gerrish*, 311 Or. 506, 513, 815 P.2d 1244, 1248 (1991); U.S. Br. 12-13. Such brief stops are designed not to detect criminal activity by the motorists themselves, but simply to protect the officer's safety while he or she engages in the legitimate task of canvassing for witnesses. It follows that the Fourth Amendment does not categorically prohibit informational checkpoints.

This result fits comfortably with this Court's roadblock cases, which hold that checkpoints serving certain interests — protecting our borders, getting drunk and unlicenced drivers off the road — are not *per se* unlawful. Such roadblocks, while related to law enforcement, do not have the primary purpose of "general crime control," as *Edmond* understood the term. Precisely the same could be said of checkpoints serving the interest in obtaining information from motorists regarding a known but unsolved crime committed by others.

II. The Lombard Checkpoint Satisfies The Reasonableness Factors Applied In This Court's Checkpoint Cases.

Because *Edmond* does not govern, the Lombard checkpoint must be evaluated under the *Brown* reasonableness factors.[1] Our initial brief demonstrated that the checkpoint passes muster under those factors. Pet. Br. 14-21; see also U.S. Br. 11-17, 23-27. Respondent's arguments to the contrary (Resp. Br. 17-28) fail to persuade.

A. The checkpoint served a weighty public concern.

In response to our contention that finding witnesses to a fatal hit-and-run is a weighty public concern (Pet. Br. 14-15), respondent asserts that *Edmond* "implicitly held that the first prong of the *Brown* test could never be satisfied by reference to general crime control." Resp. Br. 18. This argument founders on two levels. First, as demonstrated above, an informational roadblock — which seeks information about a *specific* crime —

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[1] The United States (U.S. Br. 9-10), citing the following sentence from *Edmond*, suggests that *Edmond* applied the *Brown* reasonableness factors: "The constitutionality of such checkpoint programs still depends on a balancing of the competing interests at stake and the effectiveness of the program." 531 U.S. at 47. However, as the sentence preceding the cited sentence makes clear, the Court was referring only to checkpoints that did not advance the general interest in crime control. See *ibid.* ("It goes without saying that our holding today does nothing to alter the constitutional status of sobriety and border checkpoints that we approved in *Sitz* and *Martinez-Fuerte*, or of the type of traffic checkpoint that we suggested would be lawful on *Prouse*."). Thus, the *Brown* reasonableness test applies only to checkpoints that do not advance the general interest in crime control, not to the type of checkpoints declared *per se* invalid in *Edmond*. See *Edmond*, 531 U.S. at 49 (Rehnquist, C.J., dissenting) (noting that the majority in *Edmond* did not apply the *Brown* reasonableness factors).

does not serve *general* crime control purposes. See Section I, *supra*. Second, *Edmond* did not apply the *Brown* reasonableness test to checkpoints whose primary purpose was general crime control. See p. 6 n.1, *supra*.

Thus, in determining whether finding witnesses to a fatal hit-and-run is a weighty public concern, it is necessary to look past *Edmond*. On this point, respondent contends that "solving a single accident with a single victim[] is not [a concern] of such magnitude as to justify a roadblock of a major city thoroughfare." Resp. Br. 19. However, if verifying driver's licenses and vehicle registrations qualifies as a weighty public concern, which it does (see *Edmond*, 531 U.S. at 37-38), then solving a fatal hit-and-run accident must as well.

Moreover, as *amici* ably demonstrate, enabling officers to locate witnesses to unsolved crimes is crucial to law enforcement. See U.S. Br. 11-17 (noting that informational checkpoints have been used in missing children cases); Brief for the Illinois Association of Chiefs of Police et al. as *Amici Curiae* 4-9 ("IACP Br."); Brief for Ohio and 22 Other States and Territories as *Amici Curiae* 4-8 ("Ohio Br."). For some crimes, motorists will constitute the most promising pool of potential witnesses, and oftentimes the only practicable means to reach those individuals is through an informational checkpoint. See *Gerrish*, 311 Or. at 513, 815 P.2d at 1248 ("flagging down" a motorist is "analogous to tapping a citizen on the shoulder at the outset to get a citizen's attention"). It follows that informational checkpoints serve a weighty public concern, particularly where the information sought regards a crime involving a fatality.

B. The checkpoint was designed to advance the public's interest in solving the crime.

Respondent does not even attempt to rebut our contention (Pet. Br. 15-16) that the Lombard checkpoint was designed, in

both time and place, to find witnesses to the hit-and-run. Instead, respondent briefly argues that there is no "statistical support" demonstrating the effectiveness of informational checkpoints. Resp. Br. 20-21.

This argument ignores the distinction between sobriety checkpoints and informational checkpoints. A sobriety checkpoint rests on the premise that there will be a certain non-negligible percentage of impaired drivers on the road. Thus, in evaluating such checkpoints under *Brown*, it makes sense to measure their effectiveness by calculating the percentage of motorists who are found to be impaired. An informational checkpoint does not rest on the same premise. Because criminal investigations are not linear and solving crimes often depends upon a coalescence of information gathered from several different sources, it would make little sense to evaluate informational checkpoints by calculating their "yield." Rather, such checkpoints should be evaluated by determining whether they are reasonably designed, in both time and place, to find witnesses to the specific crime. Here, the record demonstrates that the Lombard checkpoint was designed to maximize the likelihood of finding witnesses to the fatal hit-and-run.

Respondent further contends that the Lombard police had "reasonable alternatives" to an informational checkpoint. Resp. Br. 26-28. However, as shown in our opening brief (Pet. Br. 15-16), courts do not second guess law enforcement's decisions regarding which tools to use to solve crimes. See *Sitz*, 496 U.S. at 453-454. Moreover, as *amici* observe, there often are no practical alternatives to informational roadblocks. See U.S. Br. 12-17; IACP Br. 7.

C. The checkpoint was minimally intrusive.

1. Our initial brief demonstrated that the Lombard checkpoint caused a minimal "objective" intrusion. Pet. Br. 16-17. Respondent does not deny that the "objective" aspect of an

intrusion is "measured by the duration of the seizure and the intensity of the investigation." *Sitz*, 496 U.S. at 452. Rather, he argues that the detention took too long and that the officer's encounter with each motorist was akin to an interrogation. Resp. Br. 22-25.

With respect to the duration of the seizure, the record below establishes that a motorist's encounter with the Lombard officer lasted ten to fifteen seconds. J.A. 24 (testimony of Detective Vasil); Pet. App. 21a (Thomas, J., dissenting). Respondent asserts that because "[d]etention is not measured by the length one is face-to-face with a police officer," but rather "by the length of time that a person's liberty is curtailed," the actual length of detention "was several minutes." Resp. Br. 22.

Respondent's argument is unpersuasive. As an initial matter, there is no record evidence to support his supposition that the Lombard checkpoint caused an actual delay of "several minutes." In any event, the duration inquiry focuses not upon the delay occasioned by the line of cars approaching the checkpoint, but only upon a motorist's face-to-face time with the officer. This is confirmed by *Sitz*, which found it appropriate to "address only the initial stop of each motorist passing through a checkpoint and the associated preliminary questioning and observation by checkpoint officers." 496 U.S. at 450-51. The fact that *Sitz* determined that "[t]he average delay for each vehicle was approximately 25 seconds" must mean that the duration inquiry excludes the time that each vehicle spends in line. *Id.* at 448. Thus, the encounters at the Lombard checkpoint are properly considered to have lasted 10-15 seconds. And even if respondent were correct that the encounters lasted "several minutes," the checkpoint still would pass muster. See *United States v. Martinez-Fuerte*, 428 U.S. 543, 547 (1976) (approving checkpoint with a duration of "three to five minutes").

With respect to the intensity of the Lombard checkpoint, respondent contends that the officer's questioning "fall[s] squarely within the definition of 'interrogation.'" Resp. Br. 22. This contention ignores the undisputed record evidence, which establishes that the Lombard officer did not ask motorists for their names, drivers' licenses or proof of insurance, and merely handed motorists a flyer and asked if they had information regarding the hit-and-run. J.A. 15, 24-25; compare *Martinez-Fuerte*, 428 U.S. at 558 (occupants subject to visual inspection, questioning, and possible requests for documents).

The fact that the motorists themselves were not the targets of the officer's questions belies respondent's suggestion that the motorists were subject to an "interrogation." Asking citizens for information about crimes committed by others is not an interrogation; rather, it is a traditional police tool of no constitutional moment. See *Drayton*, 536 U.S. at 200 ("[l]aw enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen"); *Miranda v. Arizona*, 384 U.S. 436, 477 (1966) ("[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process" is a "traditional function of police officers in investigating crime"). There is no indication in the record that a motorist passing through the Lombard checkpoint could not have declined to respond to the officer's questions. Accordingly, respondent's characterization of the checkpoint encounter as an "interrogation" is nothing more than baseless rhetoric.

2. Our initial brief also demonstrated that the "subjective" nature of the intrusion caused by the Lombard checkpoint was minimal. Pet. Br. 17-18. In arguing the contrary, respondent does not deny that the checkpoint itself—the presence of police and emergency vehicles, the oscillating

lights, and the officer's orange reflective vest with the word "Police" — made its official nature obvious. Nor does respondent deny that Lombard officers exercised no discretion over which vehicles would be stopped.

Instead, respondent asserts that there were no "guidelines" or "constraints" on the officers' conduct. Resp. Br. 21, 25-26. Respondent's assertion defies the record. As the Lombard detective testified and the trial court found, the decision to implement the checkpoint was made by a high ranking officer. J.A. 17, 26-27, 30. At the checkpoint itself, the officer exercised no discretion as to which vehicles to stop, but rather stopped all eastbound traffic. J.A. 18-19, 24, 30. The record does not suggest that the officer did anything but hand out flyers and ask motorists whether they had any information about the fatal hit-and-run. There is no basis whatsoever for respondent to charge (Resp. Br. 26) that the Lombard roadblock "left virtually unfettered discretion to the officers in the field." To the contrary, the officers in the field exercised little discretion and comported themselves appropriately.

D. Validating the Lombard checkpoint would not result in an unacceptable proliferation of informational checkpoints.

Finally, respondent echoes the court below in suggesting that validating the Lombard checkpoint would result in an unacceptable proliferation of informational roadblocks. Resp. Br. 28-30. This suggestion ignores the fact, confirmed by *amici* Illinois Association of Chiefs of Police and Major Cities Chiefs Association, that resource constraints place severe practical limits on the use of informational checkpoints. See IACP Br. 9-10 ("the experience of many members is to use such checkpoints only in cases where an unsolved crime involves a matter of grave public concern, such as a child abduction or a fatal hit-and-run"). *Amici* further confirm that due to concerns

of "appear[ing] intrusive to the public," they "reserve [informational roadblocks] for occasional use." *Id.* 10.

Even putting aside those practical and prudential limits, respondent also ignores the legal limits imposed by the *Brown* reasonableness factors. Courts applying and enforcing those factors will be fully capable of ensuring — as with the sobriety, immigration and license checkpoints already subject to the *Brown* test — that informational checkpoints are not employed unreasonably.

III. *Sitz* Should Not Be Overruled.

Because the Lombard checkpoint (a) is not *per se* invalid under *Edmond* and (b) passes muster under the *Brown* reasonableness factors, the checkpoint comports with prevailing precedent. Implicitly recognizing this, respondent urges this Court to alter its Fourth Amendment jurisprudence by overruling *Sitz*. Resp. Br. 6-13, 28-31. Respondent has *amicus* support on this point. See Brief of National College for DUI Defense as *Amicus Curiae* ("DUI College Br.").

This Court should decline to reconsider *Sitz*. Even if *Sitz* were arguably incorrect, there would be no special justification to justify its overruling. In any event, respondent and his *amicus* fail to establish that *Sitz* was incorrectly decided.

A. Even if *Sitz* were open to question, there would be no special justification to warrant its overruling.

The doctrine of *stare decisis*, while not "an 'inexorable command,'" is "'of fundamental importance to the rule of law.'" *Harris v. United States*, 536 U.S. 545, 556-557 (2002) (internal citations omitted). "Even in constitutional cases, in which *stare decisis* concerns are less pronounced, [this Court] will not overrule a precedent absent a 'special justification.'" *Id.* at 557 (internal citation omitted). Respondent and his *amicus*, while contending that *Sitz* was wrongly decided, do not

demonstrate that *Sitz* presents any the special justifications that have been held to warrant a departure from *stare decisis*.

Sitz has not proven to be "unworkable in practice." *Allied-Signal, Inc. v. Director, Div. of Taxation*, 504 U.S. 768, 783 (1992); see also *Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989). Respondent and his *amicus* adduce no evidence, and we are aware of none, that state or federal courts have found it difficult to apply *Sitz* to sobriety checkpoints — or, for that matter, to apply the *Brown* reasonableness factors to checkpoints in general.

Nor has *Sitz* had its "doctrinal underpinnings" undermined by subsequent decisions. *Dickerson v. United States*, 530 U.S. 428, 443 (2000). To the contrary, this Court's post-*Sitz* decisions have, without exception, cited *Sitz* approvingly and reaffirmed its place in this Court's Fourth Amendment jurisprudence. See, *e.g.*, *Ferguson*, 532 U.S. at 83 n.21; *Illinois v. McArthur*, 531 U.S. 326, 330 (2001); *Edmond*, 531 U.S. at 37-39, 42-44, 47 & n.2; *Chandler v. Miller*, 520 U.S. 305, 308 (1997); *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 654 (1995). Thus, it cannot be said that *Sitz* has had its foundation undermined by subsequent decisions. Cf. *Ring v. Arizona* 536 U.S. 584, 609 (2002) (overruling *Walton v. Arizona*, 497 U.S. 639 (1990), as "irreconcilable" with *Apprendi v. New Jersey*, 530 U.S. 466 (2000)).

Finally, *Sitz* is not a case where the "facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 855 (1992). In its lengthy attempt to demonstrate that *Sitz* misapplied the *Brown* reasonableness factors, respondent's *amicus* does not establish that any of the factual predicates underlying *Sitz* have been proven wrong in the past thirteen years. See DUI College Br. 13-30. Indeed, with one exception,

amicus claims not that any of the facts presented in *Sitz* has changed, but rather that the Court misunderstood the constitutional significance of those facts.[2] That is not sufficient to justify departing from *stare decisis*. Cf. *State Oil Co. v. Khan*, 522 U.S. 3 (1997) (overruling *Albrecht v. Herald Co.*, 390 U.S. 145 (1968), because its economic foundations were proven incorrect).

While respondent and his *amicus* do not establish that *Sitz* presents any special justification to warrant its overruling, there is a strong countervailing reason not to do so. As *amicus* inadvertently demonstrates, DUI College Br. 20-21, sobriety checkpoints have "become embedded in routine police practice." *Dickerson*, 530 U.S. at 443. Accordingly, overruling *Sitz* would cause hardship to the many State and local governments that have incorporated sobriety checkpoints into their law enforcement strategies over the past thirteen years.

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[2] The one exception concerns the effectiveness of sobriety checkpoints. According to *amicus*, experience has proven that there is no nexus between sobriety checkpoints and highway safety because eight of the nine states with the highest rate of alcohol-related deaths allow checkpoints, while eight of the nine states with the lowest rate of alcohol-related deaths also allow checkpoints. See DUI College Br. 20. Those statistics are meaningless, for they do not reveal the extent to which the States that *allow* sobriety checkpoints actually *use* them, or whether eliminating checkpoints would have increased the alcohol-related death rate in each of those States. *Amicus* further asserts that between 1992 and 2001, "60% of the states that do not employ roadblocks experienced a reduction in alcohol related traffic fatalities," while 62.5% of the "states using roadblocks . . . experienced an increase in alcohol-related fatalities." *Id.* 20-21 (emphasis in original). But, again, those statistics do not speak to the relevant question of whether the rate of alcohol-related fatalities would have been higher without checkpoints (in the States that use them) or lower with checkpoints (in the States that do not use them).

See *Hilton v. South Carolina Public Railways Comm'n*, 502 U.S. 197, 203 (1991) (declining to overrule case where doing so "would require [certain] States to reexamine their statutes" governing workers' compensation); *Lawrence v. Texas*, 123 S. Ct. 2472, 2490-2491 (2003) (Scalia, J., dissenting).

For these reasons, even if *Sitz* were of questionable validity, it still would not be an appropriate subject for reconsideration.

B. *Sitz* was correctly decided.

As it happens, *Sitz* was correctly decided. In arguing the contrary, respondent and his *amicus* contend that the Framers of the Fourth Amendment would have disapproved of sobriety checkpoints. See Resp. Br. 8-13; DUI College Br. 4-13; see also NACDL Br. 4-7. Specifically, respondent and his *amicus* assert that checkpoints are the modern-day equivalent of general warrants and writs of assistance — the abusive practices of the Crown that led the Framers to adopt the Fourth Amendment and, before that, the American Colonies to Revolution. See generally *Marcus v. Search Warrants*, 367 U.S. 717, 724-733 (1961); *Boyd v. United States*, 116 U.S. 616, 622-631 (1886); Maclin, *The Complexity of the Fourth Amendment: A Historical Review*, 77 B.U. L. REV. 925, 945-947 (1997).

Respondent's charge is beyond hyperbole. As this Court has recognized, general warrants were highly intrusive devices that "authoriz[ed] either the arrest of all persons connected with the publication of a particular libel and the search of their premises, or the seizure of all the papers of a named person alleged to be connected with the publication of a libel." *Marcus*, 367 U.S. at 727; see also *Stanford v. Texas*, 379 U.S. 476, 482-483 (1965) (same).

A writ of assistance was an "even broader form of general warrant." *Marcus*, 367 U.S. at 728 n.22. While general warrants "were at least concerned with a particular designated

libel," writs of assistance "empowered the executing officer to seize any illegally imported goods or merchandise." *Ibid.* Moreover,

> in addition to authorizing search without limit of place, they had no fixed duration. In effect, complete discretion was given to the executing officials; in the words of James Otis, their use placed 'the liberty of every man in the hands of every petty officer.'

Ibid. (quoting Tudor, LIFE OF JAMES OTIS 66 (1823)); see also *Stanford*, 379 U.S. at 481 ("The hated writs of assistance had given customs officials blanket authority to search where they pleased for goods imported in violation of the British tax laws."); *Frank v. Maryland*, 359 U.S. 360, 363 (1959) ("ransacking by Crown officers of the homes of citizens in search of evidence of crime or of illegally imported goods"). Making matters worse, writs of assistance "commanded 'all officers and subjects of the Crown to assist in their execution,' and * * * were not returnable after execution, but rather served as continuous authority during the lifetime of the reigning sovereign." *United States v. New York Tel. Co.*, 434 U.S. 159, 180 n.3 (1977) (Stevens, J., dissenting) (quoting Lasson, THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION 53-54 (1937)).

The sobriety checkpoints validated in *Sitz* bear no resemblance to general warrants or writs of assistance. Unlike both instruments, a checkpoint is fixed in place and time, and does not allow the officer any discretion to pick and choose which motorists will be stopped. Cf. *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) (invalidating roving patrols, which gave unbridled discretion to officers in the field); *Delaware v. Prouse*, 440 U.S. 648 (1979) (same); *Wilkes v. Wood*, 19 How. St. Tr. 1153, 1167, 98 Eng. Rep. 489 (C.P. 1763) ("a discretionary power given to [officers] to search wherever their

suspicions may chance to fall . . . is totally subversive to the liberty of the subject"). And unlike a writ of assistance, a sobriety checkpoint obviously does not conscript citizens to assist in searching the homes of others.

Moreover, a sobriety checkpoint involves only the brief seizure of a vehicle, not the search (let alone the ransacking) of a home. The distinction between homes and vehicles was of crucial importance to the Framers. The Fourth Amendment was "undeniably designed to embody" the lessons of *Entick v. Carrington*, 19 How. St. Tr. 1029 (C.P. 1765), and *Wilkes v. Wood*, *supra*, in which Lord Camden condemned general warrants. Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757, 767 (1994); see also *Stanford*, 379 U.S. at 482-485; *Marcus*, 367 U.S. at 728; Maclin, *supra*, at 954-955. Significantly, "colonial press accounts of [those cases] stressed the violation of the house in the searches made under general warrants, and the 'papers' involved in those cases were the kind generally kept in the house." Davies, *Recovering the Original Fourth Amendment*, 98 MICH. L. REV. 547, 602 (1999).

Given this historical backdrop, "the dwelling house was not only the focus but a frontier of the framers' concern with privacy, for they accorded places of business lesser protection from promiscuous search and seizure, and ships, in the Collection Act [of 1789], almost none." Cuddihy, THE FOURTH AMENDMENT: ORIGINS AND MEANING 1556 (1990); see also Davies, *supra*, at 601 ("the actual complaints and concerns about search and seizure expressed during the historical controversies that preceded the Revolution were focused on searches of houses under general warrants"). As one scholar noted, "no late eighteenth-century lawyer would have imagined that ships were entitled to the same common law protection due 'houses, papers, and effects.'" *Id.* at 605.

It therefore comes as no surprise that section 15 of the Collection Act of 1789 — enacted by the First Congress almost simultaneously with its adoption of the Fourth Amendment — permitted the suspicionless search of ships entering port. See Collection Act of 1789, ch. 5, § 15, 1 Stat. 29, 40 ("it shall and may be lawful for the collector, naval officer and surveyor, of any port of entry or delivery, at which any ship or vessel may arrive, to put on board such ship or vessel one or more inspectors, who shall make known to the person having charge of such ship or vessel, the duties he is to perform by virtue of this act").[3] Because the Congress that adopted the Fourth Amendment also permitted the suspicionless *search* of ships, it cannot be said that the Framers would have categorically disapproved of suspicionless *seizures* at vehicle checkpoints. This Court's Fourth Amendment jurisprudence, which affords far greater protection to homes than vehicles, reflects this

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[3] Respondent ignores section 15 in arguing that "a portion" of the Act "provided that a warrantless search of ships could occur only if customs officials had reasonable suspicion that taxable property was concealed." Resp. Br. 12. It is true that section 24 of the Act, the provision to which respondent alludes, allowed for the warrantless search of ships if the officer had "reason to suspect any goods, wares of merchandise subject to duty shall be concealed." Collection Act of 1789, ch. 5, § 24, 1 Stat. 29, 43. It also is true that this Court has cited section 24 in approving warrantless searches of vehicles where officers had probable cause to believe that the vehicle contained contraband. See *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999); *Carroll v. United States*, 267 U.S. 132, 150-153 (1925). However, the searches authorized by section 24 and approved in *Houghton* and *Carroll* — like the checkpoint in *Edmond* — were designed to detect unlawful conduct taking place on the ships or in the vehicles. By contrast, section 15 allowed suspicionless searches merely upon a ship's entry into port, showing that the Framers did not believe individualized suspicion to be categorically required in all instances where vehicles are seized.

understanding. See *South Dakota v. Opperman*, 428 U.S. 364, 367 (1976) ("This Court has traditionally drawn a distinction between automobiles and homes or offices in relation to the Fourth Amendment."); *Martinez-Fuerte*, 428 U.S. at 561 ("one's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence").

In sum, for respondent and his *amicus* to liken a sobriety checkpoint to a general warrant and writ of assistance is to trivialize the abuses that prompted the Revolution and animated the Fourth Amendment. An informational checkpoint bears even less resemblance to general warrants and writs of assistance. After all, unlike sobriety checkpoints (and unlike general warrants), informational checkpoints are not designed to uncover unlawful activity by those subjected to the checkpoint. Rather, motorists at informational checkpoints are only asked (not compelled) to provide information regarding a prior crime committed by somebody else.

Finally, it bears mention that motorists passing through an informational checkpoint simply (i) slow or stop their vehicles and move in line toward the officer and (ii) if they agree, receive a flyer and/or other request for information from the officer. The first component imposes no greater restriction than an ordinary traffic light, stop sign, toll booth, accident detour, or lane closure. See *Maryland v. Wilson*, 519 U.S. 408, 420 (1997) (Stevens, J., dissenting) ("the passengers had not yet been seized at the time the car was pulled over, any more than a traffic jam caused by construction or other state-imposed delay not directed at a particular individual constitutes a seizure of that person"). And the second component, a simple request for information, is a "traditional function of police officers in investigating crimes." See *Miranda*, 384 U.S. at 477. By its nature and purpose, an informational checkpoint is incomparable to a general warrant or writ of assistance.

Accordingly, *Sitz* is not inconsistent with the Framers' understanding of the Fourth Amendment. Respondent and his *amicus* provide no evidence conclusively showing that the Framers were concerned with minor intrusions of the type caused by sobriety checkpoints; in fact, the available historical evidence suggests the contrary. And, more to the point, there is no evidence whatsoever demonstrating that the Framers would have frowned upon the even lesser intrusion caused by informational checkpoints.

* * *

In the absence of "conclusive[]" historical evidence, the proper course under the Fourth Amendment is to "strike a current balance between individual and societal interests by subjecting particular contemporary circumstances to traditional standards of reasonableness." *Atwater v. City of Lago Vista*, 532 U.S. 318, 346 (2001) (citing *Wyoming v. Houghton*, 526 U.S. 295, 299-300 (1999)). That inquiry, as demonstrated above and in our initial brief, results in the conclusion that the Lombard informational checkpoint comports with the Fourth Amendment.

CONCLUSION

The judgment of the Supreme Court of Illinois should be reversed.

Respectfully submitted.

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SEPTEMBER 2003

Supreme Court, U.S.
FILED
JUL 3 2003
OFFICE OF THE CLERK

No. 02-1060

In the Supreme Court of the United States

STATE OF ILLINOIS, PETITIONER

v.

ROBERT S. LIDSTER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether an informational checkpoint, at which police officers briefly stop all oncoming motorists to distribute flyers that seek information concerning a hit-and-run accident that occurred at the location of the checkpoint, violates the Fourth Amendment as construed in *City of Indianapolis* v. *Edmond*, 531 U.S. 32 (2002).

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In the Supreme Court of the United States

No. 02-1060

STATE OF ILLINOIS, PETITIONER

v.

ROBERT S. LIDSTER

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case involves the validity under the Fourth Amendment of a vehicle checkpoint whose purpose is to allow law enforcement officers to provide information to motorists about a crime and to seek the public's assistance in solving that crime. The Federal Bureau of Investigation (generally in conjunction with local law enforcement agencies), the United States Park Police of the Department of the Interior's National Park Service, and the Department of Agriculture's Forest Service conduct similar informational checkpoints to seek information about crimes committed within their respective jurisdictions, to alert motorists to important public safety and regulatory information, and to help locate missing persons. Because such checkpoints are an important and effective means of seeking information

and protecting the public, the federal government has a substantial interest in this case.

STATEMENT

1. On August 30, 1997, the police department in Lombard, Illinois, established an informational checkpoint at the scene of a fatal hit-and-run accident. The checkpoint was established in the same location as the hit-and-run accident, on the same day and at approximately the same time one week later, with the purpose of locating witnesses to the hit-and-run who could "provide information about the offender or his vehicle." Pet. App. 23. Between six and twelve marked police vehicles participated in the checkpoint with their lights activated. *Id.* at 2. Traffic slowed at the checkpoint so that all of the cars individually approached a police detective, who was wearing an orange reflective vest bearing the word "Police." As each car approached, the officer handed a flyer to the driver requesting information about the accident. *Ibid.* The flyer "ALERT[ed]" motorists that there had been a "FATAL HIT & RUN ACCIDENT," and asked for "ASSISTANCE IN IDENTIFYING THE VEHICLE AND DRIVER INVOLVED IN THIS ACCIDENT WHICH KILLED A 70 YEAR OLD BICYCLIST." J.A. 14. The flyer identified the time and place of the accident, and described the suspect vehicle. J.A. 14-15. The officer distributing the flyers did not ask for the driver's name, license, or insurance information, nor did he ticket for plain-view infractions like seatbelt violations. Each stop lasted approximately 10 to 15 seconds. J.A. 31.

As respondent approached the officer at the checkpoint, he "narrowly missed hitting [the] officer" with his minivan. Pet. App. 6. After jumping out of the way, the officer approached the vehicle to ask why the

driver had almost hit him. *Id.* at 24. When respondent answered, the officer smelled alcohol on his breath and noticed that his speech was slurred. *Ibid.* The officer then directed respondent to a side street, where another officer performed a number of sobriety tests. *Ibid.* After those tests, the police arrested respondent for driving under the influence. *Ibid.*

2. Respondent moved to quash his arrest and suppress evidence on the ground that the checkpoint was unconstitutional. The trial court denied the motion. It found that the decision to establish the checkpoint was made by a supervisory official, the police operated the checkpoint in a regularized manner, and the detention was for a minimal period of time. J.A. 36-37. Respondent subsequently was convicted at a bench trial of driving under the influence of alcohol. Pet. App. 3.

The Illinois appellate court reversed. Pet. App. 23-28. The appellate court concluded that this Court's intervening decision in *City of Indianapolis* v. *Edmond*, 531 U.S. 32 (2000), precluded the operation of the informational checkpoint in this case because "the express purpose of the roadblock was to search for evidence of a crime," Pet. App. 26, and "a criminal investigation can never be the basis for a roadblock," *id.* at 27.

3. A divided Illinois Supreme Court affirmed. Pet. App. 1-22. The supreme court concluded that, under *Edmond*, the Fourth Amendment prohibits any checkpoint the primary purpose of which is "general crime control." *Id.* at 7. The court found no difference, for Fourth Amendment purposes, between "a police investigation tool such as canvassing" for witnesses and a checkpoint aimed at uncovering crimes committed by the motorists themselves. *Id.* at 8.

Three Justices dissented. Pet. App. 12-22. Those Justices interpreted *Edmond* to prohibit checkpoints that are "designed to detect through 'interrogation and inspection * * * that any given motorist has committed some crime,'" *id.* at 16 (quoting *Edmond*, 531 U.S. at 44). The informational checkpoint here, in the dissent's view, was not subject to *Edmond* because it was not aimed at "discovering that the subjects of the seizure have committed some crime." Pet. App. 14. The dissenting Justices further reasoned that "canvassing for information about a deadly hit-and-run crime that happened on the roadway would serve the purpose of highway safety in a similar fashion to checking licenses to ensure that only qualified drivers are operating motor vehicles." *Id.* at 16.

SUMMARY OF ARGUMENT

Informational checkpoints are consistent with the Fourth Amendment because the important public safety interests effectively served by such checkpoints outweigh the minimal intrusion imposed on motorists using the public highways. This Court has long recognized that the Fourth Amendment does not prevent police officers from approaching individuals in public places and seeking their voluntary cooperation in an investigation. Informational checkpoints are an important means by which, in a highly mobile society, law enforcement officers can similarly advise motorists that a crime has been committed and seek information and their voluntary assistance in solving it. Informational checkpoints are commonly used to alert the motoring public to the disappearance of a child or to identify witnesses to crimes committed near roadways. Providing important information to motorists about crimes that endanger public safety and affording those

individuals the opportunity voluntarily to assist the police in the investigation of those crimes promotes responsible citizenship and is vital for law enforcement to operate effectively in a free society.

When, as in the case at hand, informational checkpoints are designed to canvas possible witnesses to vehicular crimes committed on the public roadways, the checkpoints also directly advance the public interest in roadway safety, in the same manner as the sobriety checkpoints previously upheld by this Court against Fourth Amendment challenge. Informational checkpoints are often the only practicable means of locating witnesses to such crimes in order to assess liability accurately and ultimately to remove dangerous drivers from the roadway.

Those important public interests outweigh the negligible intrusion informational checkpoints impose on motorists. As this Court has recognized, travelers on the public roadways are already subject to a variety of limitations on their freedom of movement and an ongoing duty to submit to stops or inspections for roadway safety purposes. Against that backdrop, the 10 to 15 second stop that occurred here, during which a uniformed officer provided all drivers with a flyer seeking information about a crime, imposes no appreciable intrusion on motorists' liberty. The regularized manner in which the checkpoint was operated and the informational nature of the interchange with motorists, moreover, eliminated any subjective intrusion on the motorists.

The Illinois Supreme Court did not deny the important public interests served by the informational checkpoint, nor did it disagree with the minimally intrusive character of the brief stop. The court instead concluded that the fact that the informational check-

point advanced what it considered to be general crime control purposes made it per se invalid under the Fourth Amendment. In so holding, the court found the informational checkpoint functionally indistinguishable from the narcotics-detection checkpoint invalidated by this Court in *City of Indianapolis* v. *Edmond*, 531 U.S. 32 (2000).

Edmond, however, proscribed checkpoints designed both to uncover hitherto unknown criminal activity and to gather evidence implicating the seized motorists in those crimes. The narcotics checkpoint in *Edmond* thus implicated the Fourth Amendment's protection against seizures and searches designed to incriminate the target. The informational checkpoint conducted here bears little relationship to such general crime-detection checkpoints. The checkpoint sought only to educate the traveling public about the commission of a specific, known crime that threatened their safety and to seek their voluntary assistance in removing a dangerous driver from the road. There is a significant constitutional and practical difference between law-enforcement conduct that seeks information through voluntary cooperation, and police conduct that seeks incrimination through individualized inspection and targeted questioning.

ARGUMENT

INFORMATIONAL CHECKPOINTS THAT ADVANCE IMPORTANT PUBLIC SAFETY INTERESTS AND THAT INTRUDE MINIMALLY ON MOTORISTS' LIBERTY DO NOT VIOLATE THE FOURTH AMENDMENT

The "essential purpose" of the Fourth Amendment is "to impose a standard of 'reasonableness' upon the exercise of discretion by government officials." *Delaware* v. *Prouse*, 440 U.S. 648, 653-654 (1979) (footnote

omitted). The Fourth Amendment does not impose an "irreducible requirement" of individualized suspicion. *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 561 (1976). Instead, the reasonableness of seizures that are less intrusive than a traditional arrest turns on "a balance between the public interest" served by the practice and "the individual's right to personal security free from arbitrary interference by law officers." *Brown* v. *Texas*, 443 U.S. 47, 50 (1979) (quoting *Pennsylvania* v. *Mimms*, 434 U.S. 106, 109 (1977) (per curiam), and *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 878 (1975)).

What is reasonable "depends on the context," *New Jersey* v. *T.L.O.*, 469 U.S. 325, 337 (1985), and "[t]he fact that automobiles occupy a special category in Fourth Amendment case law is by now beyond doubt," *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 315 n.10 (1978). See also *South Dakota* v. *Opperman*, 428 U.S. 364, 367 (1976) ("This Court has traditionally drawn a distinction between automobiles and homes or offices in relation to the Fourth Amendment."); *Cady* v. *Dombrowski*, 413 U.S. 433, 439 (1973) ("there is a constitutional difference between houses and cars") (quoting *Chambers* v. *Maroney*, 399 U.S. 42, 52 (1970)). For more than a quarter century, the Court has stressed that "one's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence." *Martinez-Fuerte*, 428 U.S. at 561. That distinction arises, in part, because of the "obviously public nature of automobile travel," under which cars routinely "travel[] public thoroughfares where both [their] occupants and [their] contents are in plain view." *Opperman*, 428 U.S. at 368; see also *Cardwell* v. *Lewis*, 417 U.S. 583, 590 (1974).

Against that background and this Court's cases addressing vehicle checkpoints, the informational checkpoint conducted in this case is constitutional. The checkpoint advances important governmental interests that are distinct from the general interest in crime control. Balancing those objectives against the minimal intrusiveness of the stop, the checkpoint complies with the standard of reasonableness that this Court has applied in upholding checkpoints in other contexts.

A. The Fourth Amendment Permits Vehicle Checkpoints Where The Government Interests At Stake Justify The Measure, There Are Explicit Constraints On Police Discretion, And The Intrusion On Motorists Is Limited

This Court has addressed the constitutionality of vehicle checkpoints under the Fourth Amendment on three occasions. In *United States* v. *Martinez-Fuerte*, the Court upheld the Border Patrol's use of permanent, fixed checkpoints on roads leading to the interior of the country. The Court found the "law enforcement needs served by the checkpoints"—controlling the flow of illegal aliens and smuggling—to be "substantial[]," 428 U.S. at 556-557 & n.12, while "the consequent intrusion on Fourth Amendment interests is quite limited," *id.* at 557. The checkpoint's interference with legitimate traffic was "minimal," and the exercise of discretion by officers was limited by the "regularized manner in which established checkpoints are operated." *Id.* at 559.

In *Michigan Department of State Police* v. *Sitz*, 496 U.S. 444 (1990), the Court upheld sobriety checkpoints at which cars were briefly stopped and drivers examined for signs of intoxication. The Court noted that the "magnitude" of the State's interest in combating the problem of drunk driving was undisputed, *id.* at 451. On the other side of the ledger, the Court found, the intrusion on motorists stopped at sobriety checkpoints was "minimal." *Id.* at 452. While the Court made clear that no searching examination of the sobriety checkpoint's "effectiveness" was required in order to sustain them, *id.* at 454, the Court concluded that the ability of the checkpoints to advance the States' interest was sufficient to strike the balance "in favor of the state program." *Id.* at 455.

In *City of Indianapolis* v. *Edmond*, the Court invalidated a narcotics-detection checkpoint program the "primary purpose" of which was "to uncover evidence of ordinary criminal wrongdoing," 531 U.S. at 42. While recognizing that checkpoints could be legitimately established for law enforcement purposes, the crucial factor for the Court was that "the primary purpose of the Indianapolis checkpoint is to advance the *general* interest in crime control." *Id.* at 44 n.1 (emphasis added). The Court reasoned that the intrusion on motorists' liberty occasioned by the suspicionless stops was not justified by the "generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." *Id.* at 44.

In all three cases, the Court evaluated the constitutionality of the checkpoints by applying the *Brown* v. *Texas* balancing test, under which the Court weighs "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty," 443 U.S. at 51. See *Edmond*, 531 U.S. at 47 ("The constitutionality of such checkpoint programs still depends on a balancing of the competing interests at stake and the effectiveness of the pro-

gram."); *Sitz*, 496 U.S. at 450 ("*Martinez-Fuerte*, *supra*, which utilized a balancing analysis in approving highway checkpoints for detecting illegal aliens, and *Brown* v. *Texas*, *supra*, are the relevant authorities here."); *Martinez-Fuerte*, 428 U.S. at 557-562. See also *Ferguson* v. *City of Charleston*, 532 U.S. 67, 83-84 n.21 (2001) (distinguishing analysis of cases involving "special needs" searches from analysis of "roadblock seizures," for which the Court has "applied a balancing test to determine Fourth Amendment reasonableness"). *Edmond* made clear that the pursuit of "general crime control ends," 531 U.S. at 43, is not a sufficiently grave public concern to support a program of suspicionless seizures, *id.* at 44. But *Edmond* did not preclude the use of checkpoints in all law-enforcement situations. 531 U.S. at 44 & n.1.

B. Informational Checkpoints Advance Substantial Governmental Interests Distinct From The General Interest In Crime Detection, And They Are Reasonable Under This Court's Balancing Test

Informational checkpoints are tailored to serve important public objectives. In this case, the checkpoint sought to provide the public with information about criminal activity in order to locate witnesses to a hit-and-run. Properly understood, such checkpoints serve purposes that are distinct from general crime control, *Edmond*, 531 U.S. at 43, and reviewed under the *Brown* v. *Texas* balancing test, the important public interests served by such checkpoints justify the minimal intrusion on motorists' liberty.

1. *Informational Checkpoints Effectively Promote Public Safety*

While there are a variety of informational checkpoints, such checkpoints can serve at least two important purposes relevant to this case. First, they can assist in the location of witnesses to a crime. Second, they can directly promote roadway safety.[1]

a. Effective Investigation of Crime. Informational checkpoints enable officers to locate witnesses who might otherwise be unaware of a crime or unaware that they have information necessary to its solution. The ability to question such witnesses is often critical to law enforcement. See *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 225 (1973) (discussing "the acknowledged need for police questioning as a tool for the effective enforcement of criminal laws"). Without such questioning, "those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved" with the result that "the security of all would be diminished." *Ibid.* Accordingly, this Court has long recognized that "[l]aw

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[1] Informational checkpoints also can be used to inform the public or to seek information about situations that do not involve criminal conduct. The federal Forest Service—which is responsible for policing over 193 million acres of land, encompassing nearly 400,000 miles of road, with just 600 officers—informs us that it considers the use of strategically situated informational checkpoints critical to its efforts to locate missing hikers, to coordinate with motorists the most efficient and productive shared use of National Forest System lands during times of peak demand (such as the opening of hunting or fishing seasons), and to warn motorists of bear attacks, fire hazards, and sudden changes in road conditions. Those types of checkpoints clearly do not serve general crime control interests under *Edmond* and are unquestionably valid under the Fourth Amendment.

enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places," such as on public transportation, "and putting questions to them if they are willing to listen." *United States* v. *Drayton*, 536 U.S. 194, 200 (2002).

Not all crimes can be investigated by approaching individuals on the street. The United States has become "the most mobile society on earth."[2] Ninety-one percent of all Americans own a car,[3] and Americans travel roughly 2.8 trillion vehicle miles annually.[4] "Many people spend more hours each day traveling in cars than walking on the streets." *Prouse*, 440 U.S. at 662. As a consequence, informational checkpoints are often the only practicable means available for police to alert an entire category of often critical potential witnesses—passing motorists—to the fact that a crime has been committed and that activities they witnessed may be relevant. The need to notify drivers is especially acute in policing high-speed roadways or non-urban settings, where neighbors may be distant and pedestrian traffic minimal. Individuals driving by an incident may be the only witnesses to a crime, yet they may not realize that what they saw was significant unless and until approached by the police. See, *e.g.*, *Burns* v. *Commonwealth*, 541 S.E.2d 872 (Va.) (upholding against Fourth Amendment challenge an informational checkpoint conducted to locate witnesses to the rape and murder of a 73-year-old woman), cert. denied, 534 U.S. 1043 (2001).

For example, informational checkpoints are often used in missing children cases, including in the recent disappearance and recovery of Elizabeth Smart in Utah. See Pat Reavy, *et al.*, *Sister's Story: New Details Emerge*, Deseret News (June 19, 2002), <http://deseretnews.com/dn/print/1,1442,405012725,00.html>; see also *Phoenix Cops Look for Missing Girl*, Associated Press (Jan. 7, 1999) (informational checkpoint used where child disappeared from a roadside while awaiting ice cream truck); Brenda Kilby, *Roadblocks Used to Get Kidnapping Information*, Tulsa World (July 23, 1995), *available in* 1995 WL 5614662. Because nearly half of all nonfamily child abductions involve taking the child in a vehicle,[5] it is vital that police be able to communicate quickly and directly with motorist-witnesses and to seek the assistance of the motoring public in locating the abductor's vehicle in the crucial hours following an abduction or disappearance.[6]

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[2] *Department of Transp. and Related Agencies Appropriations for Fiscal Year 1998: Hearings Before the Subcomm. on Transp. and Related Agencies of the Senate Comm. on Appropriations*, 105th Cong., 1st Sess. 56-57 (1997) (Jane F. Garvey, Acting Administrator, Fed. Highway Admin.).

[3] Stephen Moore & Julian L. Simon, *The Greatest Century That Ever Was: 25 Miraculous Trends of the Past 100 Years* 22 (Cato Inst., Policy Analysis No. 364) (Dec. 15, 1999).

[4] National Highway Traffic Safety Admin., U.S. Dep't of Transp., *Traffic Safety Facts 2001: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System* at inside front cover (2002), <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSFAnn/TSF2001.pdf>; see also Bureau of Transp. Statistics, U.S. Dep't of Transp., *National Transp. Statistics* 53, Table 1-32 (2002), <http://www.bts.gov/publications/national_transportation_statistics/2002/pdf/entire.pdf>.

[5] Office of Justice Programs, Dep't of Justice, *Nonfamily Abducted Children: National Estimates and Characteristics* 9 & Table 5 (Oct. 2002).

[6] Those same considerations make informational checkpoints useful to help locate missing adults and lost Alzheimer patients.

Those considerations animated, in significant part, the recent passage of federal Amber Alert legislation, which provides federal funding for the States' adoption and implementation of "motorist information systems to notify motorists about abductions of children." See Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, § 303, 117 Stat. 662-663 (to be codified at 42 U.S.C. 5791b). Informational checkpoints, which permit analogous notifications on local and more rural roads, are considered an important adjunct to the Amber Alert program. See 148 Cong. Rec. S8438 (daily ed. Sept. 10, 2002) (Sen. Feinstein) ("[I]f you can identify a license plate, you may well save the life of a child.").

In short, informational checkpoints are a critical means by which police accomplish in a modern, highly mobile society law-enforcement purposes that have long been considered acceptable under the Fourth Amendment: approaching persons on highly regulated public roadways—a place "where [the police] ha[ve] a right to be," *California* v. *Ciraolo*, 476 U.S. 207, 213 (1986)—to canvas for witnesses and to seek the public's voluntary assistance in solving a crime.

b. Protection of roadway safety. Informational checkpoints used to investigate crimes committed on the public roadways and to remove dangerous and irresponsible drivers from the road also serve the additional purpose of directly promoting roadway safety, in the same manner as the sobriety checkpoints upheld by this Court in *Sitz*, *supra*. In *Sitz*, the Court sustained sobriety checkpoints against a Fourth Amendment challenge, in part, because they advanced the significant public interest in stemming the "slaughter on our highways" caused by drunken drivers. 496 U.S. at 451 (quoting *Breithaupt* v. *Abram*, 352 U.S. 432, 439 (1957)). That "close connection to roadway safety," *Edmond*, 531 U.S. at 43 (discussing *Sitz*), warranted the minimal intrusion on motorists occasioned by sobriety checkpoints.

The use of informational checkpoints to solve accidents caused by aggressive driving and hit-and-run accidents serves identical public safety goals by helping police get dangerous drivers off the roadway. Aggressive drivers pose the same "type of immediate, vehicle-bound threat to life and limb," *Edmond*, 531 U.S. at 43, as drunken drivers. In 1996, almost 42,000 people died and more than 3 million were injured in police-reported crashes. Those crashes cost the Nation $150.5 billion a year. Approximately one-third of those crashes and two-thirds of the resulting fatalities are attributed to behavior associated with aggressive driving.[7] "[A]ggressive driving may be a factor in more than 50 percent of auto crashes, based on the experience of the Washington Beltway." United States Dep't of Transp., *Analysis of the Capital Beltway Crash Problem* (Mar. 1996).

Hit-and-run drivers pose a similar threat to roadway safety. In 2001, hit-and-run accidents accounted for seven percent of all fatal crashes—on the order of 1000 deaths—in urban areas. National Highway Traffic Safety Admin., U.S. Dep't of Transp., *Traffic Safety Facts 2001: Rural/Urban Comparison* 2 (2002), <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2001/2001rural.pdf>. There were 18,317 hit-and-run

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[7] *Road Rage: Causes and Dangers of Aggressive Driving: Hearing Before the Subcomm. on Surface Transp. of the House Comm. on Transp. and Infrastructure*, 105th Cong., 1st Sess. 104 (1997) (statement of Hon. Ricardo Martinez, M.D., Administrator, National Highway Traffic Safety Admin.).

injuries in 1992 in Los Angeles County alone. See Dianne Klein, *Sudden Death on the Streets*, Los Angeles Times, at A1 (May 1, 1994).

For federal law enforcement agencies, like the United States Park Police, informational checkpoints serve a key role in investigating and solving such crimes. That is because such incidents often occur in locations, like federal parkways, where motorists are the only potential witnesses. With respect to aggressive driving, moreover, commission of the underlying vehicular offenses can take place over miles of roadway. One of the more publicized aggressive driving incidents, which resulted in the deaths of three people in April 1996, spanned more than seven miles of the George Washington Memorial Parkway in Virginia, as two drivers battled each other for at least 15 minutes at speeds approaching 80 miles per hour.[8] Witnesses that see the resulting accidents, however, may not be able to say what led up to it, while drivers who witnessed the earlier speeding or weaving may be unaware that an accident ever occurred. See *Targeting Aggressive Drivers, Police Face Tough Road*, The Washington Post, at V01 (Feb. 20, 1997) ("But as police and prosecutors step up efforts to catch and convict aggressive drivers, they're finding it painstaking and difficult to conduct the investigations and build their cases. The main problem is tracking down witnesses who saw the aggressive behavior and who can tell a jury who started it.").

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[8] See *Research on the Problem of Violent Aggressive Driving: Hearings Before the House Comm. on Transp. and Infrastructure, Subcomm. on Surface Transp.*, 105th Cong., 1st Sess. 153 (1997) (testimony of David K. Willis, President and Chief Executive Officer, AAA Found. for Traffic Safety).

For similar reasons, "[h]it-and-run cases are among the hardest to solve, police say, because there is often little evidence left behind." Susan Carroll, *Hit-and-Run Deaths Often Go Unsolved*, The Arizona Republic (Feb. 25, 2003), <http://www.azcentral.com/specials/special21/articles/0225phxunsolved25.html>. Informational checkpoints directly address those "formidable law enforcement problems" on the public roadways, *Martinez-Fuerte*, 428 U.S. at 552, by alerting motorist-witnesses that an accident or crime occurred and that any information they have might be relevant, which in turn allows law enforcement to piece together a more comprehensive picture of the incident, more accurately evaluate liability issues, and more expeditiously remove dangerous drivers from the road. In short, for solving crime in a mobile society—especially when time is of the essence or the crime occurs on a high-speed roadway or in a non-urban setting—there is often an "absence of practical alternatives" to canvassing motorists through an informational checkpoint. *Brignoni-Ponce*, 422 U.S. at 881; see also *United States* v. *Ross*, 456 U.S. 798, 806 (1982) ("impracticability" of otherwise accomplishing law enforcement goals weighs in the Fourth Amendment balance); *Prouse*, 440 U.S. at 655.[9]

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[9] The Illinois Appellate Court's assumption that "more traditional law enforcement techniques would have been just as, if not more effective" (Pet. App. 28), misapprehends the difficulties involved in investigating roadway crimes like hit-and-run accidents. In any event, this Court has long refused to incorporate a "least restrictive means" test into the Fourth Amendment's requirement of reasonableness. See *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 350-351 (2001); *Skinner* v. *Railway Labor Executives' Ass'n*, 489 U.S. 602, 629 n.9 (1989) ("It is obvious that '[t]he logic of such elaborate less-restrictive-alternative arguments could raise insuperable barriers to the exercise of virtually all search-and-

2. *Canvassing Motorists To Seek the Voluntary Assistance of Witnesses to Specific Crimes Serves a Public Interest Distinct from the General Interest in Crime Detection*

The Illinois Supreme Court invalidated petitioner's informational checkpoint because, in its view, it served only the government's general interest in crime control, which *Edmond* held was insufficient to support a suspicionless checkpoint stop. Pet. App. 7-8. That analysis is incorrect for at least two reasons.

First, *Edmond*'s prohibition on checkpoints that advance the "general interest in crime control," 531 U.S. at 40, did not prohibit all checkpoints designed to advance any type of criminal law enforcement interest. *Edmond* identified a Fourth Amendment prohibition on checkpoints that are designed to discover and punish criminal activity by the stopped motorists themselves. That is, *Edmond* addressed checkpoints, like the Indianapolis narcotics checkpoint, that are designed to elicit, through "interrogation and inspection," evidence "that any given motorist has committed some crime" unknown to the officers. *Id.* at 44. In describing the constitutional flaw in the narcotics checkpoint, the Court emphasized that the Fourth Amendment prohibits a program "under which authorities might simply stop cars as a matter of course to see if there just happens to be a felon leaving the jurisdiction." *Ibid.*; see also *id.* at 41 (narcotics checkpoint's "'proximate goal is to catch drug offenders'"); *id.* at 44 (narcotics

seizure powers' because judges engaged in *post hoc* evaluations of government conduct 'can almost always imagine some alternative means by which the objectives of the [government] might have been accomplished.'") (quoting *Martinez-Fuerte*, 428 U.S. at 556-557 n.12, and *United States* v. *Montoya de Hernandez*, 473 U.S. 531, 542 (1985)) (citation omitted).

checkpoint aimed at exploiting the "generalized and ever-present possibility" that examining any given group of motorists would reveal some type of criminal conduct); *Ferguson*, 532 U.S. at 81, 85 (finding *Edmond*'s "general interest in crime control" to be present when blood tests of hospital patients were undertaken "for the specific purpose of incriminating those patients") (emphasis omitted).[10]

Suspicionless seizures designed to gather evidence against the individual seized implicate the Fourth Amendment's historic guarantee of

> self-protection: the right to resist unauthorized entry which has as its design the securing of information to fortify the coercive power of the state *against the individual*, information which may be used to effect a further deprivation of life or liberty or property.

Frank v. *Maryland*, 359 U.S. 360, 365 (1959) (emphasis added). Such searches and seizures, however, stand in stark contrast to a brief stop of an individual that does not target him in the detection and investigation of crime. While such informational stops may seek to aid law enforcement, they do *not* do so by seeking evidence to be used against the person seized. See *Camara* v. *Municipal Court*, 387 U.S. 523, 537 (1967) ("[B]ecause the inspections are neither personal in nature nor aimed at the discovery of evidence of crime, they involve a

[10] *Edmond* also recognized that "there are circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control." 531 U.S. at 44. The examples noted by the Court (*i.e.*, a checkpoint to prevent "an imminent terrorist attack") also focus generally on apprehension of a criminal who is himself stopped at the checkpoint.

relatively limited invasion of the urban citizen's privacy.") (discussing *Frank*).[11]

Informational checkpoints differ from narcotics checkpoints in precisely that respect. As in this case, informational checkpoints are not designed to identify general wrongdoing by the persons stopped at the checkpoint and to collect evidence against them. Instead, they are designed to provide and obtain information relevant to public safety. Informational checkpoints, in other words, view motorists primarily as allies in solving a known crime, not as potential perpetrators of yet-to-be-discovered crimes. "[T]he Lombard police department did not seek to interrogate and inspect motorists to ferret out evidence that the motorists *themselves* had committed crime that was as yet unknown to police." Pet. App. 6 (emphasis added). "[T]he officers did not testify that they expected even to catch the offender [at the checkpoint]; they merely

[11] The specific holding of *Frank*—that health inspectors may enter and inspect a homeowner's premises *without a warrant*—was overruled in *Camara* v. *Municipal Court*, *supra*. *Camara* concluded that the distinction that *Frank* drew between the "historic interests of 'self protection'" furthered by the Fourth Amendment and interests in "personal privacy" did not justify allowing a warrantless intrusion into "the sanctity of [the] home." 387 U.S. at 530-531. *Camara* also noted that "inspections of the kind we are considering here do in fact jeopardize 'self-protection' interests of the homeowner," because fire, health, and housing codes are enforced by criminal sanctions. *Id.* at 531. *Camara*'s reasoning is thus consistent with the conclusion that a brief *seizure* (not a search) of an *automobile* (not a home) at a regularized checkpoint is less intrusive on Fourth Amendment interests when the purpose of the checkpoint is to distribute and seek information about a specific past crime by an unknown suspect, rather than to cast about for evidence of possible ongoing crimes comitted by the motorists themselves.

wanted to get a more accurate description of him." *Id.* at 26. The concern voiced in *Edmond* that a suspicionless stop might be routinely used by police to troll for criminal activity and to identify criminals traveling in their cars is thus not implicated here.

Second, and equally importantly, giving individuals the opportunity voluntarily to assist the police in the investigation of crime furthers an essential need in a free society, and the Fourth Amendment does not prohibit such interactions. "It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement." *Miranda* v. *Arizona*, 384 U.S. 436, 477-478 (1966); see also *Coolidge* v. *New Hampshire*, 403 U.S. 443, 488 (1971) ("[I]t is no part of the policy underlying the Fourth and Fourteenth Amendments to discourage citizens from aiding to the utmost of their ability in the apprehension of criminals."). The Fourth Amendment poses no barrier to police approaching pedestrians, bicyclists, or individuals on public transportation, offering them flyers, and asking questions. See, *e.g.*, *Drayton*, 536 U.S. at 200. Restricting an individual's movement to ask such questions would, of course, implicate the Fourth Amendment. But the questions themselves do not.

Accordingly, the fact that the officer at petitioner's checkpoint "search[ed] for evidence of a crime" (Pet. App. 26), in the attenuated sense that he alerted individuals (who happened to be in cars) to the fact of an investigation and offered information about the crime, does not make the checkpoint an ordinary crime-detection or crime-control measure. Furthermore, safety plainly requires that, for police to speak to a motorist, the motorist's car must be stationary. For that reason, the act of briefly stopping cars at the checkpoint was more analogous to a "routine, non-

criminal procedure[]," *Opperman*, 428 U.S. at 370 n.5, designed "to guard the police from danger," *Colorado* v. *Bertine*, 479 U.S. 367, 372 (1987), than to the general crime-control practice at issue in *Edmond*'s narcotics-detection checkpoint.[12]

The Illinois Appellate Court suggested, without explanation, that the presence of a second officer on a side street "tend[ed] to discredit the explanation that the police were merely seeking information." Pet. App. 27. Nothing in the record, however, substantiates the court's assertion of "police subterfuge," *ibid.* Rather, it is responsible police planning when conducting any checkpoint to have in place a mechanism for dealing with any motorists or pedestrians who, like respondent, pose an immediate threat to public safety. The preparation of the police to deal with such contingencies does not make ordinary crime control the "primary purpose" of the informational checkpoint. *Edmond*, 531 U.S. at 41.[13]

Nor is there a danger that upholding the checkpoint here will make such stops a ubiquitous intrusion on the

[12] In that regard, informational checkpoints resemble the types of "noncriminal" public-safety inspections, *Opperman*, 428 U.S. at 368, of carriages, ships, and other modes of transportation (including modern-day weigh stations) carried out by law enforcement since the founding of the Republic, see *Ross*, 456 U.S. at 805; *Frank*, 359 U.S. at 367-368.

[13] Had the Lombard police department knowingly allowed respondent to continue to drive, after exhibiting indicia of drunkenness and nearly running over a police officer, the department could have opened itself to liability for any injuries or deaths caused by respondent further down the road. See, *e.g.*, *Reed* v. *Gardner*, 986 F.2d 1122 (7th Cir.), cert. denied, 510 U.S. 947 (1993); *Drushella* v. *City of Elgin, Illinois*, No. 86 C 2307, 1987 WL 5902 (N.D. Ill. Jan. 26, 1987).

traveling public. Informational checkpoints are established in response to specific, known criminal incidents —they do not seek to uncover otherwise unknown criminal conduct by motorists, as did the narcotics-detection checkpoint in *Edmond*. Further, the character of the crimes susceptible to investigation through canvassing motorists, ordinary resource limitations, the case-sensitive judgments of experienced law-enforcement investigators, and "the good sense" and "political accountability" of law-enforcement officials, *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 353 (2001), provide practical constraints on the frequency with which informational checkpoints are employed. See also *Sitz*, 496 U.S. at 453-454 ("[T]he decision as to which among reasonable alternative law enforcement techniques [to adopt] * * * remains with the governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers.").

3. The Intrusion on Motorists' Liberty Is Minimal

The constitutionality of informational checkpoints under the Fourth Amendment turns on balancing the important objectives that are effectively served by such stops against the degree of intrusion on motorists.[14] In

[14] The petition does not challenge the Illinois Supreme Court's holding that the brief stop at the checkpoint constituted a seizure, see Pet. 4, 10, and this Court has stated that "[i]t is well established that a vehicle stop at a highway checkpoint effectuates a seizure within the meaning of the Fourth Amendment." *Edmond*, 531 U.S. at 40. See also Pet. App. 24 (Officer "Vasil stated that [respondent's] van had already been stopped pursuant to the roadblock before nearly striking him"). It may be, however, that some informational checkpoints may be so brief or otherwise unintrusive as not to rise to the level of a Fourth Amendment encounter. A traffic delay alone does not amount to a seizure

evaluating the level of intrusion for purposes of Fourth Amendment analysis, it is critical that automobiles, unlike homes or offices, are already subject to a "web of pervasive regulation." *New York* v. *Class*, 475 U.S. 106, 112 (1986).

> Automobiles * * * are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order.

Opperman, 428 U.S. at 368. See also *Wyoming* v. *Houghton*, 526 U.S. 295, 303-305 (1999) (passengers, as well as drivers, have a reduced expectation of privacy in cars traveling on the public thoroughfares); *Pennsylvania* v. *Labron*, 518 U.S. 938, 940 (1996) (per curiam) (noting "the individual's reduced expectation of privacy in an automobile, owing to its pervasive regulation"). The "automobile is subject to state regulation resulting in numerous instances of police-citizen contact," *Prouse*, 440 U.S. at 662, and the "practice of stopping automobiles briefly for questioning" at a checkpoint as part of that regulatory scheme "has a long history evidencing its utility" and "is accepted by motorists as incident to highway use," *Martinez-Fuerte*, 428 U.S. at 560-561 n.14. For those reasons, the Court has recognized, in other contexts, that the intrusion on motorists "stopped briefly" at a checkpoint "is slight." *Sitz*, 496 U.S. at 451.

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within the meaning of the Fourth Amendment. Traffic backups can be caused by a wide variety of governmental action, ranging from the normal operation of traffic lights at rush hour to investigating and clearing a roadway accident. *Maryland* v. *Wilson*, 519 U.S. 408, 420 (1997) (Stevens, J., dissenting) ("a traffic jam caused by construction or other state-imposed delay not directed at a particular individual" does not "constitute[] a seizure of that person"). And a brief request to converse at a checkpoint, incident to a slowing down of traffic, does not necessarily constitute a seizure, any more than a request by the token collector at a toll both as to whether a motorist had seen a particular car would constitute a seizure. In either case, the motorists may be free to leave without answering the authorities' questions. Cf. *Terry* v. *Ohio*, 392 U.S. 1, 16 (1968) (seizure requires that an officer both "accost[] an individual *and* restrain[] his freedom to walk away") (emphasis added).

The objective intrusion on liberty occasioned by the informational stop at issue here can only be characterized as negligible. Each stop lasted only 10 to 15 seconds. J.A. 31. That is shorter than any checkpoint previously upheld by this Court, see *Sitz*, 496 U.S. at 448 (25 second stop at sobriety checkpoint); *Martinez-Fuerte*, 428 U.S. at 547 (three to five minute stop at immigration checkpoint), and is significantly shorter than the time motorists routinely sit stopped at traffic lights or busy intersections. See Fed. Highway Admin., U.S. Dep't of Transp., *Traffic Control Devices Handbook* 4-100 (1983). The Lombard Police Department designs its checkpoints, moreover, to avoid "undue congestion" and to "maintain[] an orderly flow of traffic." Department of Police, Village of Lombard, *Operation of Departmental Vehicles*, Gen. Order No. 240-20, at 7 (Jan. 30, 1997). And unlike the checkpoints previously upheld by the Court, the informational checkpoint does not involve any demand for licenses or paperwork from the driver, any probing questioning, or any ticketing for minor, plain-view traffic infractions like seatbelt violations. J.A. 31. No search is undertaken at all.

See *Segura* v. *United States*, 468 U.S. 796, 806 (1984) (plurality opinion of Burger, C.J.) ("Different interests are implicated by a seizure than by a search," given the "generally less intrusive nature of a seizure.").

The subjective intrusion on law-abiding motorists (*Sitz*, 496 U.S. at 452) was also minor. When the officer approached the motorists, they learned that their individual actions were not under investigation in any way. The officer simply handed out a flyer and spoke briefly to the motorist about the accident. Nor did the checkpoint give officers discretion to handpick motorists for seizure, which might create apprehension. J.A. 24-25; cf. *Sitz*, 496 U.S. at 453. The presence of marked police cruisers and uniformed officers demonstrated the checkpoint's official character. Pet. App. 2; J.A. 34. Consequently, the "motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion." *Martinez-Fuerte*, 428 U.S. at 558 (quoting *United States* v. *Ortiz*, 422 U.S. 891, 895 (1975)). In short, the regularity of the checkpoint procedures provided "visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve the public interest," *Martinez-Fuerte*, 428 U.S. at 559.

There was, therefore, "'nothing coercive [or] confrontational about the encounter,'" *Drayton*, 536 U.S. at 204, in this case. The informational checkpoint served only to facilitate the roadway counterpart to the long-accepted law enforcement technique of canvassing for witnesses and approaching them for voluntary questioning. That conduct is not a seizure at all when applied to pedestrians and individuals on public transportation. *Id.* at 200-204. While the need to halt motorists to communicate the same information to them does (at least in some circumstances) implicate the Fourth Amendment, the intrusion is a modest and justifiable one.

* * * * *

In sum, the brief, non-intrusive provision of important public-safety information that occurred here poses no real threat to motorists' liberty. Rather, the checkpoint in this case exemplifies the reasons for upholding informational checkpoints: they are a uniquely effective means of canvassing for witnesses to specific, known crimes, and they do not have the purpose of general crime control directed at the motorists themselves. The actions of the Lombard police department in establishing and operating the checkpoint in this case therefore did not violate respondent's Fourth Amendment rights.[15]

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[15] This case presents no question whether, even if the checkpoint itself had violated respondent's Fourth Amendment rights, the police would still have been justified in arresting him based on the intervening event of his erratic driving; and, if so, whether the fact that respondent's drunk driving was the cause of his arrest renders the exclusionary rule for any antecedent checkpoint violation inapplicable. Cf. *Segura*, 468 U.S. at 815 (suppression is inappropriate unless "the challenged evidence is in some sense the product of illegal governmental activity").

CONCLUSION

The judgment of the Illinois Supreme Court should be reversed.

Respectfully submitted.

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JULY 2003

(5)

Supreme Court, U.S.
FILED
JUL 3 ~ 2003
OFFICE OF THE CLERK

No. 02-1060

In The Supreme Court Of The United States

STATE OF ILLINOIS,
Petitioner,

v.

ROBERT S. LIDSTER,
Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF ILLINOIS

BRIEF OF OHIO AND 22 OTHER STATES AND TERRITORIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF AMICUS INTEREST AND SUMMARY OF ARGUMENT

Ohio and 22 other States and Territories (the "States") urge the Court to reverse the decision of the Illinois Supreme Court. As guardians of public order within their respective jurisdictions, the States share with Illinois an obvious interest in the question presented. The States advocate a narrow proposition: that police officers should be able to make limited use of checkpoints as an investigative tool when, in the context of a particular, pending criminal investigation, there are specific reasons to think that a checkpoint will uncover valuable information.

Just as important to our submission is what the States do *not* seek. The States acknowledge the propriety of, and in no way seek relief from, judicial review of the reasonableness of any given investigative checkpoint in a suppression hearing. Because an investigative checkpoint does not constitute a "stop[ ] justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime," *City of Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000), the requirement of individualized suspicion should not prohibit such checkpoints. But it is also true that the type of investigative, informational checkpoint that the States propose here is an "exception to the usual rule of individualized suspicion" in a context where the government interest does involve "crime control," 531 U.S. at 42-43. The Court in *Edmond* expressed its concern that, if the broader social purposes served by specific law enforcement activity justified checkpoints, "the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life." 531 U.S. at 42.

The modest proposition the States urge in this case simultaneously vindicates the legitimate government interest in criminal investigation while safeguarding the individual's interest in not suffering an excessive burden of checkpoint

stops. It does so by placing the burden on the government to articulate specific reasons why a given checkpoint is likely to lead to the discovery of information that will advance a particular pending investigation.

The specific test we advocate is this: an informational checkpoint is valid when (1) the checkpoint imposes only brief, minimally intrusive stops designed to permit officers to impart information and ask one or two general questions (which motorists may decline to answer); (2) the police are able to articulate reasons particular to the investigation why such a checkpoint is likely to uncover important information; and (3) the checkpoint in all other respects conforms to the standards set forth in *Brown v. Texas*, 443 U.S. 47 (1979). The States respectfully submit that this approach serves the legitimate interest in informational contact between officers and citizens in the context of criminal investigations while affording sufficient protection to the individual motorist's liberty.

ARGUMENT

A. Under *Edmond*, the reasonableness of checkpoint stops should be determined by examining a checkpoint's primary, programmatic purpose.

In *Edmond*, the Court reviewed its Fourth Amendment cases and articulated the concept to be used in determining what reasonableness standard should be applied to a particular search or seizure. Under *Edmond*, reasonableness is determined in accordance with the "primary, programmatic purpose" of the scheme under which the suspicionless search or seizure is conducted.

The direct holding of *Edmond* rejects checkpoint stops "that are justified only by the ever present possibility that interrogation and inspection may reveal that any given motorist has commited some crime," 531 U.S. at 44, and characterizes such checkpoints as animated by a "primary purpose" that is "indistinguishable from the general interest in crime control," *id.* at 48. In other words, where the general interest in crime control constitutes the primary, programmatic purpose behind the checkpoint, individualized suspicion is required, and as a result the checkpoint approach of stopping all motorists for no reason (other than that they pass through the checkpoint) violates the Fourth Amendment. As *Edmond* also notes, the existence of probable cause typically obviates any further inquiry into purposes and subjective intentions of officers. *Id.* at 45, citing *Whren v. United States*, 517 U.S. 806, 813 (1996). ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.").

Beyond cases where individualized suspicion is required—such as *Edmond* itself—lie those cases that consider seizures and searches based upon "the balance between the public interest and the individual's right to

personal security free from arbitrary interference by law officers." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975) (disallowing roving patrol stops to find illegal aliens); *see also United States v. Martinez-Fuerte*, 428 U.S. 543, 555 (1976) (weighing "public interest against Fourth Amendment interest of the individual" validated certain checkpoints to find illegal aliens near border); *accord Chandler v. Miller*, 520 U.S. 305, 314 (1997) (suspicionless search required "context-specific inquiry, examining closely the competing private and public interests advanced by the parties"). *Edmond* acknowledges that the "cases dealing with intrusions that occur pursuant to a general scheme absent individualized suspicion have often required an inquiry into purpose at the programmatic level." 531 U.S. at 46.

The balancing process has typically involved defining the public interest in terms of the purpose of the search, viewed from the programmatic level rather than the subjective intentions of particular officers. The States assert that the balance favors permitting the type of checkpoint at issue in this case.

B. The States often have a substantial interest in initiating informational contact with motorists and passengers, and that interest weighs strongly when measured against the minimal intrusion of a brief checkpoint stop.

The Court has long recognized the affirmative value of informational contact between officers and citizens outside the formal context of detention and interrogation. "There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." *Terry v. Ohio*, 392 U.S. 1, 34 (1966) (White, J., concurring). The "interrogation of witnesses and suspects" is "undoubtedly an essential tool in effective law enforcement." *Haynes v. Washington*, 373 U.S. 503, 515 (1963); *Schneckloth v.*

Bustamonte, 412 U.S. 218, 225 (1973) (same). Accordingly, the Court in *Miranda v. Arizona*, 384 U.S. 436 (1966), endorsed the police practice of "seek[ing] out evidence in the field to be used at trial against" a criminal defendant, opining that "[s]uch investigation may include inquiry of persons not under restraint" and "[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process." 384 U.S. at 477-78. Giving officers the information they request constitutes an "act of responsible citizenship." *Id.*

Where officers contact pedestrians or bus riders, "[l]aw enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen." *United States v. Drayton*, 122 S.Ct. 2105, 2110 (2002), citing *Florida v. Royer*, 460 U.S. 491, 497 (1983) (plurality opinion by Justice White, joined by Marshall, Powell, Stevens, JJ.); *Florida v. Rodriguez*, 469 U.S. 1, 5-6 (1984); *see also United States v. Mendenhall*, 446 U.S. 544, 555 (1980) (opinion per Stewart, J., joined by Rehnquist, J.) ("The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals' [internal citation omitted].").

In *Drayton* and similar cases, officers could initiate contact without coercive action. *See Drayton*, 122 S.Ct. at 2110 ("Even when law enforcement officers have no basis for suspecting a particular individual, they may pose questions, ask for identification, and request consent to search luggage—provided they do not induce cooperation by coercive means."), citing *Florida v. Bostick*, 501 U.S. 429, 434-35 (1991). By contrast, highway safety does not permit such an *ad hoc* method of contacting drivers or their

passengers. Thus, where motorists are most likely to possess information relevant to an investigation, a brief stop becomes unavoidable—and stopping a motorist is typically found to constitute a Fourth Amendment "seizure," because it imposes a sufficient restraint to trigger Fourth Amendment scrutiny.

Previous decisions also define the degree of interest that can justify a checkpoint program. The cases that address searches and seizures without individualized suspicion find their respective places along a continuum in accordance with the significance of the intrusion on the private security interest of the individual. At one end of the spectrum lie the search cases. The Court has long held that searches, particularly of the home or of one's effects, constitute so deep an intrusion on the privacy and security interests safeguarded by the Fourth Amendment that "searches conducted outside the judicial process, without the prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Mincey v. Arizona*, 437 U.S. 385, 390 (1978); *Chimel v. California*, 395 U.S. 752, 758 (1969) ("It is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrant wherever reasonably practicable.") (internal citation omitted). The warrant requirement for searches reflects the highly intrusive nature of officers' rummaging through one's home or effects.

As a result, the cases that consider searches unsupported by individualized suspicion typically pose the question in terms of what "special needs" are served by the search. *Ferguson v. City of Charleston*, 532 U.S. 67, 78 (2001); *see also Chandler v. Miller*, 520 U.S. 305, 314-15 (1997); *Vernonia School Dist. 47J v. Acton*, 515 U.S. 663, 660-64 (1995); *Board of Independent School Dist. v. Earls*, 122 S.Ct. 2559, 2567-68 (2002). In certain instances, the government interest has been described as "compelling,"

Vernonia, 515 U.S. at 661, but the Fourth Amendment requires only that the quantum of government interest correlate to those "factors that show the search to be relatively intrusive upon a genuine expectation of privacy." *Id.*

At the other end of the spectrum from intrusive searches lies the type of seizure at issue in this case. The Court has recognized the minimally intrusive nature of a brief traffic stop, calling it "slight," *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 451 (1990), and noting that "[o]ne's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence," *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976). As distinct from roving patrols, checkpoints reassure the motorist who "see[s] that other vehicles are being stopped," witnesses "visible signs of the officers' authority," and accordingly becomes "much less likely to be frightened or annoyed by the intrusion." *Id.* at 558, citing *United States v. Ortiz*, 422 U.S. 891, 894-95 (1975). Moreover, the Court has expressly distinguished the checkpoint situation as involving seizures that "deal neither with searches nor with the sanctity of private dwellings, ordinarily afforded the most stringent Fourth Amendment protection." *Martinez-Fuerte*, 428 U.S. at 561.

In this regard, the Illinois Supreme Court erred by relying in part on *Ferguson*, 532 U.S. 67 at 81 (2001). Pet. App. 5-6. *Ferguson* involved a requirement that hospital urine tests of mothers be routinely made available to police officers. The degree of intrusion caused by law-enforcement use of private medical information easily exceeds the intrusive effect of a brief highway stop on the privacy and security interest of a passing motorist.

Additionally, the circumstances of *Ferguson* are inapposite for the same reason that the *Edmond* scenario differs from that at issue here. Like the drug interdiction stops in *Edmond*, the urine test results in *Ferguson* were not obtained in a carefully tailored program that sought to advance a *particular*, pending criminal investigation. Instead, just like the situation in *Edmond*, police used the urine tests to identify which pregnant women might happen to be drug offenders.

In accordance with the minimal nature of the intrusion caused by a checkpoint, suspicionless checkpoint stops require only a "substantiality of the public interest" in their programmatic purpose, *Martinez-Fuerte*, 428 U.S. at 556; *accord, Sitz*, 496 U.S. at 451. The States contend here that the interest in initiating informational contact concerning a pending criminal investigation, when measured against the minimal nature of the intrusion, can justify checkpoints designed to further the purpose of obtaining such relevant information. Thus, the situation in this case did justify the informational, investigative checkpoint that was used here.

C. Where a checkpoint's primary, programmatic purpose is informational contact with citizens, reasonableness should be measured by examining the officers' particularized grounds for believing that the stops will lead to the discovery of information that is sought.

The States maintain that permitting informational checkpoints does not mean that checkpoints would "becom[e] a routine part of American life." 531 U.S. at 42. That is because evaluating informational stops, like the constitutional review of all seizures less intrusive than a traditional arrest, involves not only "weighing of the gravity of the public concerns served by the seizure" and "the severity of the interference with individual liberty," but also

"the degree to which the seizure advances the public interest." *Brown v. Texas*, 443 U.S. 47, 51 (1979). The required showing of this element cabins police discretion to conduct such checkpoints.

Determining the "degree to which the seizure advances the public interest" in this context involves assessing the particular reasons officers had to believe passing motorists might possess relevant information. In this case, Lidster was stopped at a checkpoint set up at the location of a fatal hit-and-run accident that had occurred one week before, at approximately the time the roadblock was set up. Pet. App. 2, 23. Officers intended to stop all eastbound traffic and hand out a flyer. Pet. App. 23. They specifically sought information about a Ford Bronco or large pickup truck implicated in the accident. The record also indicates the roadblock was "narrowly tailored" to connect with a potential witness "leaving a regular shift near the hit-and-run who may have seen something valuable." Pet. 2.

Also significant is the connection between the checkpoint in this case and roadway safety. Since some of the same motorists who were stopped might have passed by the same point at the time of the hit-skip accident, those persons might well have witnessed the event and possess valuable information. These circumstances both enhance the governmental interest and afford additional reason to believe the checkpoint would be successful.

Accordingly, this case presents the predicates that establish a sufficient "degree to which the seizure advances" the investigation. The checkpoint's time and location were conducive to contacting potential witnesses, and officers sought information about vehicles that passing motorists might have seen. The *Brown v. Texas* standards are met here.

D. Although exigent circumstances may justify a particular checkpoint, no exigency should be required to justify informational checkpoints generally, as long as officers articulate particularized reasons to believe that the stops will advance the pending investigation.

In *Edmond*, the Court acknowledged "circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control." 531 U.S. at 44. One such circumstance would involve efforts to "catch a dangerous criminal who is likely to flee by way of a particular route." *Id.* The Illinois Supreme Court read this passage as a justification for invalidating the checkpoint at issue here, because "there was no indication the motorist involved posed any further danger to local residents or, indeed, that the motorist remained in the vicinity," nor did police possess information that "the motorist was driving recklessly or was driving under the influence of alcohol." Pet. App. 9-10.

But this reasoning turns the logic of investigating crime on its head. The record in this case shows officers conducted checkpoint stops to identify the person or persons involved in the fatal hit-skip, and to discover the circumstances of the accident. The fact that officers did not know more about the case—who the motorist was, whether he may have appeared to be drunk or was driving erratically, whether he lived in the area or drove a Bronco with another state's plates—formed the basis for the need to find out more by asking persons who might know, *i.e.*, motorists who likely passed by at the same time and place the incident occurred.

While it is certainly true that particular exigencies can justify particular roadblocks, that should not mean that a checkpoint to find out basic information—including the dangerousness of the motorist and other factors showing

exigency—should be forbidden. It is often the very need for basic information, not the exigency, that justifies the minimal intrusion of a traffic stop.

E. Recognizing the validity of informational checkpoints raises no specter of pedestrian seizures, because pursuing the same investigative interest in the pedestrian context does not require seizure of a pedestrian.

As noted, highway safety dictates that officers cannot initiate informational contact with motorists without a stop that constitutes a Fourth Amendment seizure. Since the same safety needs do not apply when officers approach a pedestrian, it follows that the officer need not "seize" a pedestrian in order to hand out a flier or ask questions. The holding that the States ask for should make this point clear: the interest in informational contact justifies only the brief traffic stop necessary to hand out information or ask questions. Alone, that interest does not justify further detention, nor does that interest legitimate a stop not required by ordinary concerns of highway safety.

To illustrate the point, we hypothesize, instead of the roadblock in this case, two police officers handing out fliers and asking questions on a street corner at the same time and place as a hit-skip occurred one week before. One pedestrian stands at the street corner, wanting to cross but stopped by a red light. An officer approaches with a flier, tries to hand it to the pedestrian and also tries to ask a question or two. The pedestrian does not desire to cooperate, but does not want to walk away because she is waiting for the light to change. No Fourth Amendment seizure will occur so long as a reasonable person in the pedestrian's position would "feel free to terminate the encounter." *Drayton*, 122 S.Ct. at 2110.

To be sure, the pedestrian's movements may be confined by virtue of the red light, just as in *Drayton* a bus passenger "may not want to get off a bus if there is a risk it will depart before the opportunity to reboard." *Id.* at 2111. But as in *Drayton* that is the "natural result" of choosing to walk in a given direction; it "says nothing about whether the police conduct is coercive." *Id.*[1]

The hypothetical can be altered to introduce more or less coercive circumstances, but the point remains the same. Officers can pursue their interest in initiating informational contact with pedestrians without imposing any level of control that amounts to a Fourth Amendment seizure.

[1] Even the dissent in *Drayton* does not contest the proposition that the passenger's own travel plans alone do not constitute coercive conduct by officers. Instead, the *Drayton* dissent focuses on the multiple officers at the scene and the particular circumstance that the driver had collected all the tickets and then ceded control of the bus to officers, so that the officers assumed an additional authoritative role in that context. 122 S.Ct. at 2115-16.

CONCLUSION

For all the foregoing reasons, the decision of the Illinois Supreme Court should be reversed.

Respectfully submitted,

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July 3, 2003

(6)

Supreme Court, U.S.
FILED
JUL 3 ~ 2003
OFFICE OF THE CLERK

No. 02-1060

In the
Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

ROBERT S. LIDSTER,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

BRIEF OF AMICI CURIAE The Illinois Association of Chiefs of Police and the Major Cities Chiefs Association IN SUPPORT OF PETITIONER

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15 pp

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INTEREST OF AMICI CURIAE[1]

The Illinois Association of Chiefs of Police ("IACP") is a voluntary professional organization comprised of over 800 members from jurisdictions across Illinois. Those jurisdictions include law enforcement executives from large urban centers employing thousands of police officers, to law enforcement executives in small, rural municipalities with only a few officers. Most IACP members are active members of law enforcement, many of whom are responsible for ensuring that vehicle checkpoints within their jurisdictions operate within legal parameters. In addition, IACP members include legal advisors who counsel law enforcement officers and administrators on such issues, including the formulation of policy on the subject. IACP members are committed to the best interests of their respective communities and the law enforcement profession.

The Major Cities Chiefs Association ("MCC") is a professional organization of police executives representing the 59 largest cities or jurisdictions in the United States and Canada. Representation in the United States exceeds 200,000 law enforcement personnel serving a population in excess of 47 million. The MCC provides a forum for urban police chiefs, sheriffs, and other law enforcement chief executives to discuss common problems, to share information and problem-solving strategies, and to articulate the public safety needs of large cities in the formulation of criminal justice policy. The MCC is dedicated to the advancement of research, legislation, policy and

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity, other than the IACP or the MCC, their supporters, and their counsel, made a monetary contribution to the preparation and submission of this brief.

programs that ensure the safety of our citizens and the officers that protect them.

Because of the direct relationship between IACP and MCC members and the daily activities of law enforcement across the United States, amici have firsthand knowledge of the practical impact of the Illinois Supreme Court's ruling in this case, and are therefore in a unique position to impart their knowledge to this Court. The IACP and the MCC believe that their views will aid this Court in the resolution of the issues raised in the present appeal. The IACP and the MCC submit this brief in support of petitioners and with the consent of the parties. Letters of consent have been filed with the clerk of the Court.

SUMMARY OF ARGUMENT

The Illinois Supreme Court's opinion in this case was premised upon a misunderstanding of the vehicle checkpoint during which Robert Lidster was apprehended, and an overbroad interpretation and application of this Court's decision in City of Indianapolis v. Edmond, 531 U.S. 32 (2000). Edmond held that vehicle checkpoints designed to discover drug-related offenses violated the Fourth Amendment because the purpose of the checkpoints, which were part of a generalized effort to discover drug-related crimes, was indistinguishable from a general interest in crime control.

By contrast, the checkpoint in the instant case was not part of a generalized scheme to detect crimes nor was it designed to search for evidence of illegal activity. Instead its primary purpose was to impart information about a crime to potential witnesses who might have pertinent information to provide to police. The difference is critical. While the latter situation fits within this Court's limited exceptions to the rule that a seizure is unreasonable absent individualized suspicion, the former situation, with its primary purpose of intercepting general criminal wrongdoing, violates the Fourth Amendment.

The Illinois Supreme Court's ruling threatens to restrict the effectiveness of law enforcement efforts nationwide. Under facts such as those present here, checkpoints have traditionally been effective means to alert citizens to crime, and to in turn procure information. Citizens are often the only witnesses to crimes, or, the sole source that will lead to discovery of other information about a crime. If police cannot reach out to the public in this simple manner for assistance, then law enforcement efforts will be significantly hindered.

The vehicle checkpoint at issue here is important not only for its effectiveness in alerting the public to crime and possibly garnering leads in specific cases, but also for its contribution to furthering highway safety. In particular, amici assert that checkpoints instituted in serious and unsolved vehicle crimes are essential to highway safety.

There is no sound basis for the view that upholding the vehicle checkpoint in this case will lead to a proliferation of such stops. Our members report that informational checkpoints are not widely or indiscriminately employed, both as a practical matter and because of concern about intrusions upon the public.

The limiting of law enforcement use of checkpoints solely for traffic safety and not for the more critical law enforcement purposes is unwarranted. Such a construction leaves no room for law enforcement use of checkpoints to combat terrorism and promote more general interests of transportation security. Moreover, such a construction is inconsistent with currently federally mandated checkpoints for security at the nations airports when homeland security levels are increased. Based on the foregoing, amici urge this Honorable Court to reverse the decision of the Illinois Supreme Court.

ARGUMENT

THE ILLINOIS SUPREME COURT'S DECISION ERADICATES A LEGITIMATE LAW ENFORCEMENT TOOL

Although statistics on the use and effectiveness of vehicle checkpoints by law enforcement are not readily available, in the opinion of the amici, vehicle checkpoints such

as that used in the instant case are critical to effective law enforcement. As discussed infra, informational checkpoints employed under the circumstances present here are akin to canvassing for possible witnesses in the area of a crime, which is an important and accepted law enforcement technique. Moreover, vehicle checkpoints are essential in traffic fatality cases to advance highway safety. Additionally, although vehicle checkpoints of the type present here are of paramount importance to law enforcement, in practice such checkpoints are used sparingly and there is no need for concern that they will become routinely employed. Finally, permitting use of checkpoints solely for the narrow law enforcement purpose of traffic safety adversely impacts other more critical law enforcement interests.

A. Vehicle Checkpoints Designed To Inform The Public Of A Specific Crime And To Procure Witnesses Or Leads Are Constitutional And Necessary

Canvassing of possible witnesses in an area where a crime has occurred is an accepted law enforcement technique. See, e.g., Florida v. Royer, 460 U.S. 491 (1983) (plurality opinion) (police do not violate Fourth Amendment by approaching person in public place and eliciting voluntary answers to questions regarding a crime). Similarly, vehicle checkpoints, instituted for the purpose of locating possible witnesses to a traffic fatality, are integral to effective law enforcement. By misconstruing the purpose of the checkpoint employed by police in the instant case, and by erroneously interpreting and applying this Court's decision in City of Indianapolis v. Edmond, 531 U.S. 32 (2000), the Illinois Supreme Court deemed unconstitutional a necessary type of vehicle checkpoint. As a consequence of the Illinois Supreme

Court's decision, a vital instrument of law enforcement has been struck down under circumstances vastly different from those present in Edmond.

The Edmond holding does not speak to "intrusions aimed primarily at purposes beyond the general interest in crime control." 531 U.S. at 48. Unlike the fishing expedition for narcotics crimes present in Edmond, the checkpoint here was essentially an information-distribution process. The primary purpose was to impart information about a hit-and-run fatality to persons who might have information to provide to police.

Thus, unlike Edmond, the checkpoint was not part of a generalized scheme to detect crimes or discover evidence of ongoing illegal activity. For example, it did not include a visual inspection of vehicles for front end damage or other evidence of an accident. The checkpoint did not exist to catch possible offenders within its net, such as Robert Lidster or the hit-and-run driver. Instead, its purpose was to ask for the public's help in the investigation of an existing offense, and to possibly receive information that would assist in identifying the offender.

Certainly, the checkpoint in this case was a seizure within the meaning of the Fourth Amendment. See Edmond, 531 U.S. at 37, 40. It satisfies the requirement of reasonableness, however, because it served the State's interest in solving a fatal crime, the nature of the intrusion was minimal, and the checkpoint was an effective method of advancing the State's interest. See Brown v. Texas, 443 U.S. 47, 50-51 (1979). Each vehicle was stopped for 10-15 seconds. No searches were conducted, nor were licenses or insurance cards requested. The officers did not ask the drivers for their names, and occupants were not checked for seatbelt violations.

Moreover the timing and location of the checkpoint were tailored to increase the likelihood of locating witnesses.

Just as it is proper for police to approach pedestrians on the street to inform them of criminal activity and to ask questions, our members likewise view it as proper to conduct a brief vehicle checkpoint in the area of a crime, at a time and under circumstances designed to encounter persons likely to have information. Moreover, it is important to do so because once witnesses leave an area, police may not be able to locate them again. In the experience of IACP and MCC members, checkpoints are in some cases the only method of potentially locating witnesses to a crime. Indeed in many criminal cases, citizens are often the only witnesses to a crime, or, the sole source that will lead to discovery of other information about a crime. Thus, if police cannot reach out to the public in this simple manner for assistance, then law enforcement efforts will be greatly hindered.

Under facts such as those present here, checkpoints have traditionally been legitimate and expeditious means to alert citizens to a crime that has been committed, and to seek information. Performing vehicle stops near the scene of an accident and distributing informational flyers as a practical matter significantly increases the likelihood of eliciting leads and solving crimes that have already occurred. The Illinois Supreme Court's ruling threatens to restrict the effectiveness of law enforcement efforts statewide. That restriction on law enforcement will spread nationwide should this Honorable Court choose to affirm the Illinois Supreme Court's decision. The members of the IACP and MCC strongly urge this Honorable Court to find vehicle checkpoints constitutional under the present scenario.

B. Informational Vehicle Checkpoints Further Highway Safety

Our members report that handing out flyers at vehicle checkpoints has proven useful in a variety of cases, including homicide, sex crimes, kidnapping and robbery. In particular however, IACP and MCC members report that vehicle checkpoints such as those instituted by the Lombard Police in this case are of foremost importance in maintaining highway safety and therefore are keenly useful in fatal accident cases. Our members concur that unless law enforcement may permissibly canvass a mobile population soon after a hit-and-run accident under the circumstances present here, the ability to solve fatal highway crimes will be profoundly diminished and often defeated.

Indeed, this Court has recognized that highway safety is a legitimate interest that may justify vehicle checkpoints. In Edmond this Court expressly noted that its opinion did not overrule its previous decisions approving the constitutionality of the vehicle checkpoints considered in Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990), or United States v. Martinez-Fuerte, 428 U.S. 543 (1976). Edmond, 531 U.S. at 47. Sitz held that highway sobriety checkpoints with brief, suspicionless seizures designed to combat drunk driving were constitutional. Sitz, 496 U.S. at 447-451. Likewise, Martinez-Fuerte held that stops at permanent immigration checkpoints near the United States border with Mexico were constitutional. Martinez-Fuerte, 428 U.S. at 561-564.

This Court further acknowledged in Edmond that its opinion did not alter its pronouncement in Delaware v. Prouse, 440 U.S. 648 (1979). Edmond, 531 U.S. at 47. While in Prouse this Court invalidated a discretionary spot-check of a motorist's

driver's license and registration, it nonetheless suggested that "[q]uestioning of all oncoming traffic at roadblock-type stops," would be a lawful avenue to serve the interest in highway safety. Prouse, 440 U.S. at 663. Moreover, in Prouse this Court noted that the purposes of such a roadblock are distinguishable from a purpose of generally investigating crime. Edmond, 531 U.S. at 39.

Edmond instructs that "the common thread of highway safety" runs through this Court's decisions in Sitz and Prouse, and that Prouse highlights the significant difference between highway safety versus general crime control interests. 531 U.S. at 40. Even a cursory reading of Edmond, Sitz and Prouse suggests that the vehicle stops here were constitutionally permissible. Not only was the checkpoint instituted in response to a particular roadway crime, but an underlying purpose of the stops was to further roadway safety by solving the crime. To strike down vehicle checkpoints under the circumstances present here would negatively impact highway safety across the United States, and therefore amici request that this Court reverse the decision of the Illinois Supreme Court.

C. In Practice, Informational Vehicle Checkpoints Are Invoked Infrequently

The Illinois Supreme Court denounced the informational checkpoint here in part because it believed that failure to do so would potentially "make roadblocks 'a routine part of American life.'" People v. Lidster, 202 Ill.2d 1, 9 (Ill. 2002), quoting Edmond, 531 U.S. at 42. As the Lidster dissent notes, however, such a result is unlikely, given that police manpower and resources are limited. Lidster, 202 Ill.2d at 23. Moreover, even where informational checkpoints are used by law enforcement, they will nonetheless be subject to the three-prong

reasonableness test of Brown v. Texas, 443 U.S. 47, 50-51 (1979). Lidster, 202 Ill.2d at 23.

Our members report that although vehicle checkpoints such as those in the instant case are viewed as critical, they are not invoked indiscriminately nor routinely. In fact the experience of many members is to use such checkpoints only in cases where an unsolved crime involves a matter of grave public concern, such as a child abduction or a fatal hit-and-run. Not only is a limited use of informational checkpoints necessary from the standpoint of resources and manpower, but, our members inform us that they are mindful of the need not to appear intrusive to the public, and therefore, they wish to reserve such contact for occasional use. Based on the foregoing, as a practical matter and out of respect for the public, the Illinois Supreme Court's concern about a proliferation of vehicle checkpoints is unfounded.

D. Narrow Limits on Checkpoints Adversely Impact Important Law Enforcement Interests.

Amici believe that if the interests of traffic safety warrant the imposition of checkpoints, more weighty law enforcement interests should also warrant the use of such checkpoints. For example, our members advise us that in the area of combating terrorism and providing for homeland security, vehicle inspection checkpoints are currently established at the direction of the federal government. The Department of Homeland Security's Transportation Security Administration, has directed airports to utilize local law enforcement to establish vehicle checkpoints on access roads to airports when the Homeland Security Advisory System (HSAS) condition Orange is reached. To date, these directions have been issued and are

given in the form of security directives which have been effective only during (HSAS) condition Orange.

Creating a security perimeter at transportation hubs, like airports, is a key component to the security of those facilities. Establishing checkpoints is an efficient way to increase the security of that perimeter against vehicles which may carry large explosive devices. Moreover the establishment of visible checkpoints serves to enhance public confidence in the safety of the transportation system as well as deter against terrorist threat.

In all respects those checkpoints established at airports meet the substantive requirements of Sitz. They are of short duration and limited intrusiveness-designed only to monitor for large explosive devices. The checkpoints established at airports are highly visible. Moreover, motorists have the ability to avoid them. While these checkpoints are not in the nature of general crime control, they are also not, strictly speaking, in the nature of highway safety. A reading of the Edmond opinion consistent with that provided by the Illinois Supreme Court casts doubt on the constitutionality of such practices.

It seems anomalous to amici to permit law enforcement to establish checkpoints for highway safety but not the more critical law enforcement goals of combating terrorism and securing the nation's transportation system. Because the Illinois Supreme Court decision is based on reasoning which would compel such a result, we respectfully request reversal of that court's decision.

CONCLUSION

For the reasons discussed herein and in the brief of Petitioner, amici respectfully request that this Honorable Court

reverse the decision of the Illinois Supreme Court, and hold that on the basis of its precedent and sound judicial policy, the vehicle checkpoint in this case did not violate the Constitution.

Respectfully submitted,

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No. 02-1060

(10)

Supreme Court, U.S.
FILED
AUG 7 2003
OFFICE OF THE CLERK

In The Supreme Court of the United States

STATE OF ILLINOIS,

Petitioner,

v.

ROBERT S. LIDSTER,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF FOR THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, THE AMERICAN CIVIL LIBERTIES UNION, AND THE ACLU OF ILLINOIS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

The National Association of Criminal Defense Lawyers (NACDL) is a professional bar association with almost 10,000 direct members, and 80 affiliates representing another 28,000 members. NACDL has members in all fifty states, and the American Bar Association recognizes NACDL as an affiliate organization and awards it full representation in its House of Delegates. Among NACDL's primary objectives is the preservation of the liberties protected by the Constitution through vigorous advocacy against the excesses of law enforcement. Consistent with this interest, NACDL has participated in an *amicus* capacity in several of the Court's recent Fourth Amendment decisions. *See United States v. Drayton*, 536 U.S. 194 (2002); *United States v. Arvizu*, 534 U.S. 266 (2002); *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). This matter requires the Court to assess the contours of the Fourth Amendment's prohibitions on suspicionless seizures, and therefore squarely implicates NACDL's strong interest in ensuring that law enforcement strictly comply with Fourth Amendment mandates.

The American Civil Liberties Union (ACLU) is a nationwide, nonpartisan, nonprofit organization with more than 400,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this country's civil rights laws. The ACLU of Illinois is one of its statewide affiliates. Since its founding in 1920, the ACLU has appeared before this Court in numerous cases

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[1] This brief was not authored in any part by counsel for either party. In addition, no person or entity other than *amici curiae* and its counsel made a monetary contribution to the submission of this brief.

involving the scope and meaning of the Fourth Amendment. In particular, the ACLU served as direct counsel in this Court's two most recent roadblock cases: *Edmond*, 531 U.S. at 32, and *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990). The proper resolution of this case is, therefore, a matter of direct concern to the ACLU and its members.

STATEMENT OF THE CASE

Amici curiae adopt the Statement of the Case set forth in Respondent's brief.

SUMMARY OF ARGUMENT

The Fourth Amendment articulates a principle reflective of the essence of democratic freedom – that individual citizens are presumed upstanding and, as such, are entitled to be free from government intrusion in their affairs. As reflected both in the Framers' original conception of the Amendment and in this Court's repeated analyses of the provision, informational seizures, like those at issue here, are fundamentally irreconcilable with this principle, and are therefore unconstitutional.

The Framers intended that the Fourth Amendment embody a broad prohibition on suspicionless searches and seizures, and this Court's relevant decisions confirm that proscription. Indeed, prior to this Court's decision in *Terry v. Ohio*, 392 U.S. 1 (1968), the Court held that only those seizures which satisfied the requirement of probable cause were constitutionally permissible. *Terry* recognized a

limited exception to the probable cause mandate, permitting brief investigative detentions when officers had reasonable suspicion to believe that the detainee was involved, or would imminently be involved, in criminal activity. While *Terry* represented a deviation from the probable cause rule, it nevertheless reaffirmed the broad principle that some degree of individualized suspicion was required before government could intervene in the life pursuits of presumptively law-abiding citizens. Subsequent to *Terry*, the Court carved out a further exception to the *Terry* exception, authorizing suspicionless seizures in limited circumstances in which the individual detainee was specifically implicated in the government's regulatory purposes. Though, like *Terry*, these so-called "special needs" cases represent a deviation from the constitutional command, also like *Terry*, these cases are limited to a tightly circumscribed class of seizures. Critically, neither the *Terry* cases permitting seizures in the absence of probable cause, nor the "special needs" cases permitting seizures in the absence of individualized suspicion, have ever authorized suspicionless detentions merely for the purpose of ascertaining whether the detainee had information pertaining to the alleged criminal conduct of third parties.

Here, Petitioner has engaged in an indiscriminate program of roadblock seizures, in which all individuals coincidentally finding themselves in the vicinity of the roadblock were, on a suspicionless basis, subjected to informational detention. This program, however, is completely incompatible with the Constitution's broad prohibition on suspicionless seizures. The Fourth Amendment simply does not permit government, without suspicion, to seize individuals merely for the purpose of determining

whether they might have information pertaining to the conduct of third parties. While law enforcement officials are certainly empowered to approach citizens and question whether they have information relevant to a legitimate law enforcement purpose, this Court's precedents, in addition to the Fourth Amendment's underlying values, make undeniably clear that officials may not forcibly detain individuals in an effort to effect that purpose. For these reasons, Petitioner's regime of roadblock seizures violates the dictates of the Fourth Amendment, and must therefore be held unconstitutional.

ARGUMENT

I. THE FOURTH AMENDMENT STRICTLY PROHIBITS INFORMATIONAL SEIZURES.

As Justice Brandeis famously observed, the Fourth Amendment embodies an individual "right to be let alone," an entitlement constituting the "most comprehensive of rights and the right most valued by civilized men." *Olmstead v. United States*, 227 U.S. 438, 478 (1928) (Brandeis, J., dissenting). In particular, the Fourth Amendment ensures the right of citizens to conduct their affairs unfettered by governmental intrusion, save to the extent such meddling is strictly authorized under law. According to this Court:

> No right is held more sacred, or is more carefully guarded, . . . than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestioned authority of law.

Union Pac. R. Co. v. Botsford, 141 U.S. 250, 251 (1891); *see also Terry*, 392 U.S. at 8-9 (1968) (providing that the Fourth Amendment protects the "inestimable right of personal security"); *United States v. Martinez-Fuerte*, 428 U.S. 543, 556 (1976) ("The Fourth Amendment imposes limits on search-and-seizure powers in order to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.").

This Court's recognition of the personal autonomy embodied in the Fourth Amendment is absolutely consistent with the principles which motivated the Framers to draft and ratify that Amendment in the first place.[2] The Framers were centrally concerned with general warrants, which had permitted sweeping searches and seizures of broad areas and subject matters without individualized suspicion. *See* William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning, 682-1791*, at 1402, 1499-1501 (1990) (Ph.D. Dissertation at Claremont Graduate School);[3] Thomas Y. Davies, *Recovering the*

[2] This Court has repeatedly viewed the original meaning of the Fourth Amendment as a key consideration in divining the provision's content in a particular context. *See Wyoming v. Houghton*, 526 U.S. 295, 299 (1999) (providing that, in interpreting the Fourth Amendment, the Court "inquire[s] first whether the act was regarded as an unlawful search or seizure under the common law when the amendment was framed"); *Florida v. White*, 526 U.S. 559, 563 (1999) ("In deciding whether a challenged government action violates the [Fourth] Amendment, the Court takes care to inquire whether the action was regarded as an unlawful search and seizure when the Amendment was framed.").

[3] Three members of this Court have recognized Cuddihy's dissertation as "one of the most exhaustive analyses of the original meaning of the Fourth Amendment ever undertaken." *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 669 (1995) (O'Connor, dissenting).

Original Fourth Amendment, 98 Mich.L.Rev. 547, 554-55 (1999); Tracey Maclin, *When the Cure for the Fourth Amendment is Worse Than the Disease*, 68 S.Cal.L.Rev. 1, 9-12 (1994); *see also Vernonia School Dist.*, 515 U.S. at 669 (O'Connor, dissenting) ("[W]hat the Framers of the Fourth Amendment most strongly opposed ... were general searches – that is, searches by general warrant, by writ of assistance, or by any other similar authority."). The historical record is replete with ratification-era denunciations of the dangers to personal freedoms posed by these general warrants. Patrick Henry, for example, proclaimed during the Virginia ratification debates of 1788 that:

> general warrants, by which an officer may search suspected places, without evidence of the commission of a fact, or seize any person, without evidence of his crime, ought to be prohibited. As these are admitted, any man may be seized, any property may be taken, in the most arbitrary manner, without any evidence or reason. Even the most sacred may be searched and ransacked by the strong hand of power.

3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 587-88 (Jonathan Elliot ed., 2d ed. 1838); *see* Davies, *supra*, at 580-81 (quoting various ratification-era sources describing general warrants as providing "a power that places the liberty of every man in the hands of a petty officer" and permitting seizures to be "made at discretion [by] any common fellows ... upon their own imaginations, or the surmises of their acquaintances, or upon other worse and more dangerous intimations").

Moreover, because ratification-era officers generally had no *ex officio* authority to arrest, and their power to

seize and search was therefore dependent on the issuance of a warrant, the Framers understood that regulation of the warrant necessarily circumscribed the power to seize and search. *See* Davies, *supra*, at 578. General warrant seizures, then, comprised the entire class of suspicionless seizures that were conducted during the ratification era. *See id.* Thus, because the Framers added the Fourth Amendment precisely to proscribe suspicionless searches and seizures based upon general warrants, and because general warrants, in turn, enabled those suspicionless seizures that a ratification-era officer could potentially perform, the historical record reveals that the Framers specifically intended the Fourth Amendment to broadly prohibit suspicionless seizures. *See* Tracey Maclin, *The Complexity of the Fourth Amendment: A Historical Review*, 77 B.U.L. Rev. 925, 970-71 (1997) (providing that the history surrounding ratification demonstrates that "promiscuous warrantless intrusions exhibiting the same traits as general warrants ... violate the principle embodied" in the Fourth Amendment); Davies, *supra*, at 582 (concluding, in the context of an exhaustive review of the history of the Fourth Amendment, that "it is wholly implausible" that the Framers would have approved of the broad use of warrantless, and therefore suspicionless, intrusions).[4]

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[4] Although the history establishes a broad prohibition on suspicionless seizures, it should be noted that narrow exceptions, immaterial to the issues involved here, were recognized to the overarching rule. Specifically, during the ratification era, a number of states permitted warrantless inspections of commercial enterprises pursuant to regulatory objectives, and federal law authorized limited warrantless commercial searches for tax collection and customs purposes. *See* Cuddihy

(Continued on following page)

Informed by the Framers' intentions with respect to the Fourth Amendment, this Court's precedents have effected a longstanding prohibition of suspicionless seizures. Specifically, the Court has concluded that the Fourth Amendment fundamentally proscribes personal seizures in the absence of probable cause. *See Florida v. Royer*, 460 U.S. 491, 498 (1983); *Dunaway v. New York*, 442 U.S. 200, 207-09 (1979). Indeed, "prior to [this Court's ruling] in *Terry v. Ohio*, any restraint on the person amounting to a seizure for the purposes of the Fourth Amendment was invalid unless justified by probable cause." *Royer*, 460 U.S. at 498; *see also Dunaway*, 442 U.S. at 208 ("*Terry* for the first time recognized an exception to the requirement that Fourth Amendment seizures of persons must be based on probable cause."). In *Terry*, this Court recognized "a limited exception to this general rule," *Royer*, 460 U.S. at 498; *see Terry*, 392 U.S. at 27 (providing that its deviation from probable cause is "narrowly drawn"), permitting brief investigatory detentions when an officer reasonably suspects that an individual has committed or is about to commit a crime, *see id.*; *see also United States v. Sokolow*, 490 U.S. 1, 17 (1989). While *Terry* deviated from the constitutional mandate of probable cause, it nevertheless authorized seizures on the basis of less-than-probable-cause only when an officer had an empirically-justifiable, individualized suspicion that the detainee was engaged in wrongdoing; in so doing, the

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at 1501-02, 1507-08. These narrow exceptions, which, interestingly, mirror the "special needs" exceptions currently recognized by the Court, *see infra*, are immaterial to the informational seizures at issue here.

Court expressly prohibited *Terry* seizures on the basis of an "unparticularized suspicion." *See Terry*, 392 U.S. at 27.

In recent times, the Court has recognized a circumscribed corollary to the *Terry* exception, authorizing seizures in the absence of the individualized suspicion mandated by *Terry* in narrowly-defined circumstances. These cases permit suspicionless seizures in a carefully delimited set of "special needs" cases in which unique regulatory and administrative interests are implicated. *See infra*. Notably, the special needs cases all involve instances in which the individuals detained are themselves directly implicated in the government's regulatory purposes, and none involve circumstances, like those here, in which government is seeking to detain an individual as part of a witness identification and questioning scheme. These cases, in short, do not imply a basis on which to find the constitutionality of seizures seeking information concerning third parties.

This Court's jurisprudence therefore unmistakably informs that a showing of probable cause is the constitutional "default position" with respect to governmental seizures of the person. *Terry* creates a narrow doctrinal exception for seizures predicated upon reasonable, individualized suspicion of wrongdoing. And this Court has recognized an even more limited exception to this exception in the special needs context. Accordingly, the constitutional scope of seizures conducted without individualized suspicion, let alone probable cause, could scarcely be more circumscribed.

Consistent with this rejection of suspicionless seizures as a constitutionally permissible governmental course of conduct, this Court's precedents do not permit roadblock

seizures for the purpose of inquiring whether the individual detainee might have information relevant to a pending criminal investigation.[5] While it is true, as Petitioner contends, that officers "do not violate the Fourth Amendment by approaching individuals . . . and putting questions to them" concerning the conduct of third parties, *see* Petitioner's Br. at 12 (quoting *Drayton*, 536 U.S. at 200); *see also Royer*, 460 U.S. at 497, such questioning is permissible only to the extent that it does not rise to the level of a seizure, *see Drayton*, 536 U.S. at 200 (recognizing that such questioning is permissible only when the individual "has not been seized"). The constitutionality of this kind of questioning, then, turns on the voluntary character of the exchange: the questioning is permissible only insofar as

[5] Contrary to the suggestion of the United States, *see* Brief for the United States as *Amicus Curiae* at 23 n.14, it is well-settled that roadblock detentions constitute seizures for Fourth Amendment purposes. *See Edmond*, 531 U.S at 40; *Sitz*, 496 U.S. at 450; *Martinez-Fuerte*, 428 U.S. at 556; *see also Delaware v. Prouse*, 440 U.S. 648, 653 (1979) ("[S]topping an automobile and detaining its occupants constitute[s] a 'seizure' within the meaning of [the Fourth Amendment], even though the purpose of the stop is limited and the resulting detention quite brief."). Moreover, even if this question were not already decided, the roadblocks here at issue would surely constitute seizures given that the Lombard Police Department made specific efforts to ensure that drivers could not avoid them. *State of Illinois v. Lidster*, 202 Ill.2d 1, 3 (2002) (providing that the Lombard officers were placed such that oncoming motorists could not "skirt" the roadblock); *see also Terry*, 392 U.S. at 16 ("[W]henever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."). In any event, the argument of the United States is not before this Court since Petitioner has already conceded that its roadblock constitutes a seizure for Fourth Amendment purposes. *See* Illinois' Petition for Writ of Certiorari at 4, 10; *see also Reno v. Koray*, 515 U.S. 50, 55 n. 2 (1995) (failing to consider argument raised by *amicus curiae* where it was not raised by interested party).

the individual citizen has a choice not to entertain or respond to the officer's inquiries, and may disengage from the interrogation unilaterally and at any time. *See id.*; *cf. I.N.S. v. Delgado*, 466 U.S. 210, 215 (1984) (recognizing that a Fourth Amendment seizure occurs when "a reasonable person would have believed that he was not free to leave"). In these situations, an individual's voluntary accommodation of the officer's inquiries is the jurisprudential equivalent of a willing, non-coercive conversation between two co-equals and, as such, does not implicate the protections of the Fourth Amendment. *See Royer*, 460 U.S. at 498 (recognizing the absence of a constitutional violation where no seizure has occurred and the individual has voluntarily submitted to officer questioning).

This Court's precedents are clear, on the other hand, that the suspicionless questioning of potential witnesses is impermissible when the questioning rises to the level of a seizure. Indeed, the Court has unequivocally concluded that an individual "may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds." *Royer*, 460 U.S. at 498. There is simply no authority permitting coercive, government seizures merely so that officers may speculatively question individuals on whether they might have information material to an existing investigation. The narrow range of "special needs" suspicionless seizures permitted under the Fourth Amendment, discussed more fully below, *see infra*, pertains entirely to detentions designed to uncover regulatory and other kinds of non-criminal illegalities among those detained. The cases, however, neither suggest nor imply that government may conduct suspicionless seizures pursuant to the generalized and indefinite hope that any

given detainee might have information relevant to the conduct of third parties.

Moreover, such a conclusion would be corrosively irreconcilable with the imperatives of the Fourth Amendment – imperatives reflected not only in this Court's decisions, but in the Framers' unambiguous disdain for suspicionless seizures. Given the large number of vehicular crimes occurring on America's thoroughfares, *see, e.g.*, United States Department of Transportation, National Highway Traffic Administration, *Traffic Safety Facts 1998: Overview* (1998), <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF98/Overview98.pdf> (discussing hundreds of thousands of potential vehicle-related crimes), in addition to the fact that, as a nation of highways, *see, e.g.*, Wendell Cox & Jean Love, *40 Years of the U.S. Highway System: An Analysis of the Best Investment a Nation Ever Made* (1996), <http://www.publicpurpose.com/freeway1.htm#exec> (discussing high density of roadway usage and centrality of highways to nation's growth), innumerable crimes occur in the proximity of a roadway, there is an essentially limitless supply of predicates which could serve as the basis for roadblock detentions of the type conducted by Petitioner. Petitioner's argument would therefore, based upon the mere occurrence of an offense near a highway, allow suspicionless seizures of all individuals in the area pursuant to the entirely hypothetical and wholly indiscriminate hope that any particular detainee might have material information. A constitutional rule permitting suspicionless seizures of such an unbounded scope and applicability, *amici curiae* respectfully submit, would be decidedly antithetical to two centuries of jurisprudence repeatedly emphasizing that seizures in the absence of individualized suspicion, let alone probable cause, are rare and narrowly

circumscribed exceptions to the constitutional rule. Accordingly, this Court should hold that informational seizures are categorically unconstitutional and, for that reason, reject the roadblock seizures conducted by Petitioner.

II. INFORMATIONAL SEIZURES DO NOT FALL WITHIN THE LIMITED CATEGORY OF PERMISSIBLE SUSPICIONLESS SEIZURES.

As discussed above, suspicionless seizures are exceptions to the *Terry* rule of individualized suspicion, which itself is an exception to the Fourth Amendment presumption of probable cause. Suspicionless seizures are therefore presumptively unconstitutional, *Edmond*, 531 U.S. at 37; *Chandler v. Miller*, 520 U.S. 305, 313 (1997), and are permissible only in limited circumstances. Specifically, suspicionless seizures are allowed only when "special needs beyond the normal need for law enforcement" are at issue. *Skinner v. Railway Labor Executives' Assoc.*, 489 U.S. 602, 619 (1989); *see also Vernonia School Dist.*, 515 U.S. at 653; *Chandler*, 520 U.S. at 314. These circumstances are limited to those in which government seeks to further unique regulatory interests in non-criminal matters, as suspicionless seizures designed to serve "the ordinary enterprise of investigating crimes" are clearly prohibited. *Edmond*, 531 U.S. at 44.

In the roadblock context, this Court has upheld two programs of suspicionless seizures – both of which were permitted precisely because they involved unique, regulatory interests. In *Martinez-Fuerte*, the Court found constitutional a program of permanent roadblocks near the Mexican border which were designed to contain and deter illegal immigration. *See* 428 U.S. at 543. In upholding

these roadblocks, the Court explicitly recognized the unique sovereign interests implicated in border control, *id.* at 551-52; *see United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985) (recognizing *Martinez-Fuerte* as a component of a body of precedents that "reflect longstanding concern for the protection of the integrity of the border"); *see also United States v. Ramsey*, 431 U.S. 606, 616 (1977) (recognizing the well-settled "right of the sovereign to protect itself by examining persons and property crossing into this country"), and emphasized the "formidable law enforcement problems" posed by immigration matters, *id.* at 552. The Court additionally noted that the overriding purpose of the immigration checkpoints was to "minimize illegal immigration," *id.* at 552, and that consistent with this purpose, "[m]ost illegal immigrants are simply deported" civilly, rather than prosecuted criminally, *id.* at 553 n. 9; *see Almeida-Sanchez v. United States*, 413 U.S. 266, 278 (1978) (providing that border checkpoints "are undertaken for administrative rather than prosecutorial purposes, [as] their function is simply to locate those who are illegally here and deport them"); *see also I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1043 (1984) (recognizing that the "primary objective" of immigration apprehensions is civil deportation). Thus, the roadblocks at issue in *Martinez-Fuerte* were deemed constitutional given both the strong and unique sovereign interests implicated in border control, and the fact that the government's overriding purpose was the regulatory and prospective integrity of the border, rather than the criminal prosecution of illegal immigrants. *See also Edmond*, 531 U.S. at 38-39 (concluding that the *Martinez-Fuerte* roadblocks were upheld precisely because they were not primarily designed to detect "ordinary criminal wrongdoing").

Similarly, in *Sitz*, the only other case in which this Court has upheld a program of suspicionless roadblocks, the Court deemed constitutional a scheme of sobriety checkpoints. *See* 496 U.S. at 455. In so doing, the Court relied upon the fact that the sobriety checkpoints were predicated upon the State's "interest in preventing drunken driving," *id.*, and reducing the dangers that impaired drivers pose to the driving public, *id.* at 447-48. Indeed, this Court made clear in *Edmond* that the roadblocks involved in *Sitz* were found constitutional precisely because they involved regulatory interests in preventing the prospective threats to public safety posed by drunk drivers, as opposed to criminal interests in prosecuting individual violators of drunk driving laws. *Id.* at 39. The *Edmond* court specifically emphasized that:

> [The *Sitz*] checkpoint program was clearly aimed at reducing the immediate hazard posed by the presence of drunk drivers on the highways, and there was an obvious connection between the imperative of highway safety and the law enforcement practice at issue.

Id.; *see also id.* at 43 (emphasizing that drunk drivers pose an "immediate vehicle-bound threat to life and limb").

While *Martinez-Fuerte* and *Sitz* upheld roadblock programs explicitly because they served special regulatory, non-criminal interests, this Court has very recently disallowed a set of roadblocks which, on the contrary, served the ordinary, criminal needs of law enforcement. In *Edmond*, the Court held unconstitutional a program of roadblocks intended to interdict the flow of illicit drugs. *Edmond*, 531 U.S. at 40-41. In finding these roadblocks violative of the Fourth Amendment, the Court emphasized that the "primary purpose of the . . . narcotics checkpoint

program is to uncover evidence of ordinary criminal wrongdoing." *Id.* at 42. Reinforcing the constitutional distinction between non-criminal, special needs purposes and ordinary, criminal objectives, the Court, while appreciating the gravity of the public health and safety interests implicated in narcotics distribution, *id.* ("There is no doubt that traffic in illegal narcotics creates social harms of the first magnitude."), stressed that "the gravity of the threat alone cannot be dispositive of questions concerning the means law enforcement officers may employ to pursue a given purpose." *Id.* Criminal matters, concluded the Court, invariably involve matters of grave public importance, and simple reliance on the weightiness of the law enforcement pursuit at issue would effectively eviscerate the Fourth Amendment's protections against unreasonable seizures. *Id.* Indeed, given the practically universal scope of the criminal laws, the Court held that it could not "sanction stops justified by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." *Id.* at 44. Accordingly, the Court held that the line between suspicionless seizures designed to serve special, non-criminal regulatory objectives, and those intended to promote the common interests of criminal investigation, must be preserved and, on that basis, deemed unconstitutional the drug interdiction checkpoints at issue. *Id.* at 48.

The Court's application of the special needs exception in these roadblock cases is entirely consistent with its application of the doctrine in other contexts. In a range of cases, this Court has repeatedly held suspicionless seizures permissible only to the extent they serve special needs beyond ordinary crime control. *See, e.g., Vernonia School Dist.*, 515 U.S. at 665 (permitting suspicionless

drug testing given school district's special regulatory interest in ensuring student safety); *South Dakota v. Opperman*, 428 U.S. 364 (1976) (permitting search of impounded vehicle given that the search was not motivated by criminal investigative purposes, but administrative caretaking purposes); *Camara v. Municipal Court*, 387 U.S. 523, 531 (1967) (permitting administrative inspections to enforce regulatory housing codes). This Court's precedents therefore, in the roadblock as well as non-roadblock contexts, unambiguously provide that the requirement of individualized suspicion may be constitutionally relaxed only when government's primary purpose is the advancement of special regulatory objectives beyond the ordinary need for crime control.

The roadblocks at issue here, however, run directly antithetical to this Court's precedents and therefore should not be permitted. Because roadblocks constitute seizures for the purposes of the Fourth Amendment, *see supra* at 10 n.5, Petitioner's roadblock program is constitutional only if it is primarily designed to serve one of the special, non-criminal purposes discussed above. As found by the Supreme Court of Illinois, Petitioner's roadblock scheme was designed

> to obtain information from motorists regarding a hit-and-run accident that took place one week earlier, at the same location, and at the same time of day. In particular, the police wanted information regarding a Ford Bronco or full-sized pickup truck implicated in the accident.

Lidster, 202 Ill.2d at 3. Petitioner therefore initiated the roadblock not with the purpose of uncovering regulatory or other non-criminal dangers to roadway safety among the

class of drivers stopped, but with the objective of identifying potential witnesses to a prior criminal offense or vehicular crime.

This purpose, however, is synonymous with an interest in "the ordinary enterprise of investigating crimes," *Edmond*, 531 U.S. at 44, and therefore does not meet constitutional standards. First, witness identification and questioning is a necessary incident to the investigation of crime, *see, e.g.,* United States Department of Justice, National Institute of Justice, *Crime Scene Investigation: A Guide for Law Enforcement*, at 1, 13, 14, 18, 20, 25 (January 2000) (recognizing that the identification and careful questioning of potential witnesses is a critical aspect of criminal investigations), <http://www.ncjrs.org/pdffiles1/nij/178280.pdf> and, as such, is indistinguishable from a roadblock checkpoint designed to apprehend the individual perpetrator of the hit-and-run accident – a checkpoint plainly unconstitutional under *Edmond*. If it is unconstitutional for the police to conduct a checkpoint designed to apprehend potential violators of particular crimes, surely it is unconstitutional for police to conduct the same checkpoint for the purpose of finding and interrogating hypothetical witnesses to those crimes.

Even more to the point, the informational roadblocks here at issue necessarily serve ordinary crime control interests, as distinguished from the kind of special, regulatory interests recognized by this Court, precisely because they are focused entirely on the retrospective investigation of already committed acts, as opposed to the prospective prevention of potential harms to public safety. Here, the roadblock was initiated solely to obtain information concerning a specific accident that had occurred a week prior at the same location. The common denominator of

the special needs cases, by contrast, is that they are categorically focused on enjoining prospective harms to special government needs posed by broad classes of potential offenders. The special needs exception simply does not permit suspicionless seizures in connection with the retrospective investigation and apprehension of specific, knowable individuals who are believed to have potentially been involved in wrongdoing. Rather, that is the virtual definition of "the ordinary enterprise of investigating crimes," *Edmond*, 531 U.S. at 44, and therefore fails to satisfy Fourth Amendment standards concerning suspicionless seizures.

For these reasons, Petitioner's roadblock program is incompatible with this Court's special needs doctrine and therefore violates the Fourth Amendment. The Fourth Amendment allows suspicionless seizures in limited circumstances, and these circumstances, decidedly, do not permit informational seizures.

CONCLUSION

If this Court were to permit government, without suspicion, to detain individuals on the indiscriminate and omni-present rationale that they might have information relevant to the criminal conduct of third parties, the Fourth Amendment's protections of personal autonomy would be imaginary. Moreover, such a holding would be irreconcilable not only with the Framers' express contempt for suspicionless seizures, but also with this Court's longstanding precedents specifically prohibiting informational seizures, and permitting suspicionless seizures only in limited "special needs" circumstances. Accordingly, the

Court should find unconstitutional Petitioner's regime of roadblock seizures and affirm the judgment of the Supreme Court of Illinois.

Respectfully submitted,

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Dated: August 7, 2003

Supreme Court, U.S.
FILED
AUG 7 2003
OFFICE OF THE CLERK

No. 02-1060

In The
Supreme Court of the United States

ILLINOIS,

Petitioner,

v.

ROBERT S. LIDSTER,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF *AMICUS CURIAE* OF NATIONAL COLLEGE FOR DUI DEFENSE IN SUPPORT OF RESPONDENT

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The National College for DUI Defense[1] is a non-profit professional organization founded in 1995. The mission of the College includes assisting its members in the defense of their clients charged with drinking and driving offenses and the advancement of liberty through constitutional advocacy. The College has over 525 members throughout the United States and presents at least two major continuing education programs specializing in issues relating to the defense of persons charged with driving under the influence. The College's Summer Program has been continuously presented at the facilities at Harvard Law School since 1996. Winter Sessions have been given every year since 1997. The College also co-sponsors training and educational seminars with organized Bar Associations including the National Association of Criminal Defense Lawyers.

The National College for DUI Defense believes that *Michigan v. Sitz*, 496 U.S. 444 (1990), should be abandoned, not expanded, because it misapplied the balancing test for determining the reasonableness of criminal investigatory seizures articulated in *Brown v. Texas*, 443 U.S. 47, 50-51 (1979), thereby causing millions of innocent motorists to be subjected to mass suspicionless criminal investigatory seizures. Since an analysis of the instant case must necessarily draw from the authority of *Sitz*,

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[1] Consents to file this Brief *Amicus Curiae* have been obtained from counsel of record for both Petitioner and Respondent and filed with the Clerk of this Court. No counsel for any party has authored any part of this brief. No person or entity has made any monetary contribution for the preparation or submission of this brief, nor has its counsel received any compensation from any source for the efforts extended in the preparation of this *Amicus* Brief.

Amicus has focused on the infirmities and fallacy of *Sitz*, grounded in an historical perspective, and invites this Honorable Court to consider the constitutional merits counseling against transient law enforcement roadblocks.

SUMMARY OF THE ARGUMENT

Justice Thomas's dissent in *City of Indianapolis v. Edmond*, 531 U.S. 32, 56 (2002), was a prophetic insight worthy of a new sequel to the hit movie "*Back to the Future*." This Court's roadblock decisions have not included a critical analysis of either the original meaning or intent of the Fourth Amendment in the context of mass suspicionless seizures of law abiding citizens. State courts considering the constitutionality of transient law enforcement roadblocks by the light of history have determined their unconstitutionality. *Pimental v. Department of Transportation*, 561 A.2d 1348, 1352 (R.I. 1989) ("[I]t would shock and offend the framers of the Rhode Island Constitution if we were to hold that the guarantees against unreasonable and warrantless searches and seizures should be subordinated to the interest of efficient law enforcement."); *State v. Henderson*, 756 P.2d 1057, 1058 (Idaho 1988). That same analysis applies in the federal context. The Framers took to heart the "petty indignities" suffered by those in England and colonial America under writs of assistance and general warrants, enacting the Fourth Amendment as an impenetrable barrier between the citizen and unjustified government action threatening the fundamental right of liberty.

Sitz has been the source of widespread criticism, originating with the dissents and continuing through

today in law review articles,[2] state court opinions,[3] and legislation barring the use of sobriety roadblocks.[4] The Court misapplied the balancing test enunciated in *Brown* in three significant respects. First, it departed from the fundamental precept in *Camara v. Municipal Court*, 387 U.S. 523, 533 (1967), that public safety cannot justify creation of an exception to the Fourth Amendment's individualized suspicion requirement unless the government can demonstrate that its legitimate ends cannot be met absent an exception. Second, it yielded an inappropriate degree of discretion to law enforcement to determine whether transient roadblocks serve highway safety. This is the fallacy of *Sitz* – the past thirteen years have revealed that transient law enforcement roadblocks bear no nexus with highway safety. Finally, in balancing the intrusion of mass suspicionless criminal investigatory seizures, *Sitz* did not consider the societal intrusion.

As illustrated by the case *sub judice* and *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), *Sitz* has been

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[2] Strossen, *Michigan Department of State Police v. Sitz: A Roadblock to Meaningful Judicial Enforcement of Constitutional Rights*, 42 HASTINGS L.J. 285, 370 (1991); Thatcher, *Michigan v. Sitz: A Sobering New Development For Fourth Amendment Rights*, 20 CAP. U.L. REV. 279 (1991); *Drunk Driving Roadblocks*, 104 HARV.L.REV. 266 (1990); O'Loughlin, *Guerillas In The Midst: The Dangers Of Unchecked Police Powers through the Use Of Law Enforcement Checkpoints*, 6 SUFFOLK J. TRIAL & APP. ADVOC. 59.

[3] *E.g., Ascher v. Commissioner*, 519 N.W.2d 193 (Minn. 1994) (characterizing *Sitz* as a "radical departure" from the proper application of *Brown* balancing test). States rejecting roadblocks prior to *Sitz* on independent state grounds have not reversed themselves. *See City of Seattle v. Mesiani*, 755 P.2d 775 (Wash. 1988); *Pimental v. Department of Transportation*, 561 A.2d 1348, 1352 (R.I. 1989); *Michigan v. Sitz*, 506 N.W.2d 209 (Mich. 1993) (rejecting sobriety roadblocks on remand).

[4] *E.g.*, N.H. Rev. Stat. Sec. 265:1-a.

received by law enforcement as creating a "roadblock exception" to the Fourth Amendment where the roadblock serves a worthy interest. For as long as history has documented the duals between government and citizens, the government has argued that its interests justify the sacrifice of certain liberties. *Sitz* indulged the government's argument, loosely applying the constitutional balancing test, thereby giving law enforcement the weapon of mass suspicionless seizures to combat the scourge of drunk driving. In light of our present awareness that it is no more than a blunt instrument, the time has come for a considered analysis of the case sanctioning the proliferation of mass suspicionless criminal investigatory seizures, that the experiment may finally be put to rest.

ARGUMENT

I. LAW ENFORCEMENT ROADBLOCKS ARE CONTRARY TO THE FRAMERS' INTENT MANIFESTED IN THE BILL OF RIGHTS.

The Fourth Amendment's provision for the security of the individual is unequivocal in its command and guaranty, not of *creating* a right, but of *securing* a preexisting right, "[t]he right of the people to be secure in their person . . . against unreasonable . . . seizures [which] shall not be violated." The constitutional question presented by warrantless seizures is whether the seizure was reasonable. The focal point of that analysis is an assessment of the perimeter of the rights the Framers intended to safeguard when the Bill of Rights was drafted, for it is through an historical lens that "reasonableness" draws its meaning. *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995) ("Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, our effort to give content to this term may be guided by the meaning

ascribed to it by the Framers of the Amendment."). Accordingly, it is necessary to recall the impetus for the Fourth Amendment.

It was during the winter of 1761, when a young John Adams intently listened to arguments on behalf of sixty-three Boston Merchants in the Massachusetts Bay Writs of Assistance Case. *Paxton's Case*, Quincy's Reports 51 (Mass. 1761) (*See also* pgs. 469-82). Writs of assistance were a breed of general warrants and were issued to customhouse officers charged with collecting duties imposed upon the colonies by England as a method of generating revenue. NELSON B. LASSON, THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION 51-53 (1937). In *Paxton's Case*, Boston Merchants had petitioned for a hearing on the propriety of writs of assistance issuing after King George II died, since under a statute of Anne, all writs of assistance expired six months after the death of the sovereign. *Id.* at 51-53. The nameless writs, issued by superior court judges, gave customhouse officers unrestrained authority to search and seize any items for which duties had not been paid. *Id.* John Adams recounted the indelible arguments of the merchants' celebrated lawyer, James Otis Jr., to wit:

> I do say in the most solemn manner, that Mr. Otis's oration against the Writs of Assistance breathed into this nation the breath of life. . . . Every man of a crowded audience appeared to me to go away, as I did, ready to take arms against Writs of Assistance. Then and there was the first scene of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born. In 15 years, namely in 1776, he grew to manhood and declared himself free.

WORKS OF JOHN ADAMS, VOL. X, 247-248.

A writ of assistance allowing the indiscriminate investigation and seizure of goods for which duties had not

been paid, however, differed from England's infamous general warrant because it did not, of itself, authorize the arrest of any individual. THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION at 54. Presumably, that is because the general warrant was used by the office of England's Secretary of State to enforce licensing laws forbidding libelous publications by the press, laws which it does not appear were prosecuted by the Crown in the colonies. *See generally Stanford v. State of Texas*, 379 U.S. 476, 482-483 (1965); *Boyd v. United States*, 116 U.S. 616, 626-627 (1886). However, while James Otis Jr. argued against the custom-house officers' writs of assistance in colonial America, the battle against general warrants ensued in England, where charges were levied against Lord Halifax for issuing a general warrant commanding the seizure of persons responsible for, and papers relating to, an alleged libelous publication, No. 45 of the *North Briton*. THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 300, fn 1 (1878), quoting MAY'S CONSTITUTIONAL HISTORY OF ENGLAND, c. 11.

Lord Halifax, being without any evidence of the identity of the authors and publishers of No. 45, issued a general warrant, not against any individual, but against the crime. Four messengers, emboldened by their roving commissions, traversed the populace in search of unknown offenders, "[h]olding in their hands the liberty of every man whom they were pleased to suspect." *Id. See also Leach v. Three of the King's Messengers*, 19 How. St. Tr. 1001, 1008 (1765) for text of general warrant commanding the messengers "to make strict and diligent search for the authors, printers, and publishers of . . . The North Briton, No 45." In three days, the ardent messengers arrested forty-nine people, most of whom were innocent. A TREATISE ON CONSTITUTIONAL LIMITATIONS 300, fn 1. Ultimately, the

messengers received information that Wilkes was the author for whom they had been searching, whereupon they set out to arrest him and seize his papers under authority of the general warrant. *See Wilkes v. Wood*, 19 How. St. Tr. 1153, 1161 (1763) (reporting that Lord Halifax admitted on cross-examination that the warrant was issued three days before receiving any information identifying Wilkes). Wilkes, upon being presented with the nameless warrant, declared it "a ridiculous warrant against the whole English nation," and refused to go with the messengers. A TREATISE ON CONSTITUTIONAL LIMITATIONS 301. Not to be deterred, the messengers carried Wilkes away in his chair. *Id.*

Wilkes brought an action against Mr. Wood, the under-secretary of state who personally superintended the warrant, as well as both secretaries of state, Lord Egremont and Lord Halifax, for false imprisonment. *Wilkes v. Wood*, 19 How. St. Tr. 1153 (1763). Lord Chief Justice Pratt declared the warrants illegal, stating that they were "totally subversive of the liberty of the subject," *id.* at 1167, echoing James Otis Jr.'s pronouncement of writs of assistance being "the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book, [placing] the liberty of every man in the hands of every petty officer." A TREATISE ON CONSTITUTIONAL LIMITATIONS 303, quoting WORKS OF JOHN ADAMS, VOL. II, pgs. 523-524.

Ultimately, the House of Commons passed resolutions condemning the general warrant. WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, VOL. IV, 288 (1765). The demise of the general warrant was applauded both in England and colonial America, as recognized in *Boyd*:

> As every American statesman, during our revolutionary and formative period as a nation, was

> undoubtedly familiar with this monument of English freedom, and considered it as the true and ultimate expression of constitutional law, it may be confidently asserted that its propositions were in the minds of those who framed the Fourth Amendment to the constitution, and were considered as sufficiently explanatory of what was meant by unreasonable searches and seizures.

Id. at 626-627. *See also* JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 648 (1905) (noting that the Fourth Amendment "was doubtless occasioned by the strong sensibility excited, both in England and America, upon the subject of general warrants almost upon the eve of the American revolution.").

Back in Colonial America, the flame of indignation ignited by *Paxton's Case* matured to an inferno with the Declaration of Independence in 1776, a ringing indictment of the Crown. Included among the charges was a tacit reference to suspicionless searches and seizures. CARL L. BECKER, THE DECLARATION OF INDEPENDENCE 12 (1922) ("He has sent hither swarms of officers to harass our people and eat out their substance."). One by one, the colonies began enacting their own bills of rights reflecting the concept of natural rights implicit in the Declaration of Independence, *i.e.*, rights which man is entitled to enjoy by virtue of his divine creation, a concept originating with Thomas Aquinas in the Thirteenth Century and carried forward through Montesquieu and Locke to scholars such as Blackstone. THE DECLARATION OF INDEPENDENCE 37; FRANCIS N. THORPE, THE CONSTITUTIONAL HISTORY OF THE AMERICAN PEOPLE 21 (1898). *See, e.g.,* JOHN LOCKE, THE SECOND TREATISE OF CIVIL GOVERNMENT, c. II (1680) ("To understand political power aright, and derive it from its original, we must consider what state all men are naturally in, and that is, a state of perfect freedom to order

their actions . . . as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.").

George Mason drafted the first so-called bill of rights for Virginia in June of 1776. The Virginia Convention adopted Mason's Bill of Rights, but added two additional provisions, one of which was a prohibition against general warrants. HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT 79-80. Pennsylvania's provision securing the right to be free from suspicionless searches and seizures resembles what would become the Fourth Amendment, insofar as it contains every element of the Fourth Amendment, while Massachusetts' Declaration of Rights was the first to use the phrase "unreasonable searches and seizures." *Id.* at 79-82. The Declarations of Rights of Maryland, North Carolina, Vermont, and New Hampshire provided similar safeguards against unreasonable searches and seizures, while Connecticut forbade arrests and seizures unless "clearly warranted" by the laws of the state. *Id.* 81-82.

The Framers, however, did not include a bill of rights with the Constitution it sent to the colonies for ratification. The Convention considered a bill of rights, but rejected the idea, largely because it was believed that the Constitution would not repeal the states' bills of rights and that the rights were so fundamental that it would be dangerous to list them and thereby exclude others by implication. *See id.* at 83-85. Thus in the fall of 1787, the Constitution was presented to the Continental Congress. There, Richard Henry Lee advocated for a declaration of rights providing, *inter alia*, that "the Citizens shall not be exposed to unreasonable searches, seizure of their persons, houses, papers, or property." *Id.* at 87, n.32. Though unsuccessful in his quest for a declaration of rights, the absence of a declaration of rights was significant enough that Congress submitted the Constitution to the States

without an expression of approval. *Id.* at 87-88. Most assuredly, the absence of a bill of rights was the primary impediment to the States' ratification of the Constitution. Fierce debates over ratification ensued; of significant importance was the lack of protection from overzealous government agents, as articulated by Richard Henry Lee (author of *Letters of a Farmer*):

> I feel myself distressed, because the necessity of securing our *personal rights* seems not to have pervaded the minds of men; for many other valuable things are omitted: – for instance, general warrants, by which an officer may search suspected places, without evidence of the commission of a fact, or seize any person without evidence of his crime, ought to be prohibited.

Id. at 94, quoting DEBATES ON THE FEDERAL CONSTITUTION, VOL. III 588 (JONATHAN ELLIOT, ED. 1836) (Italics in original.).

Massachusetts, South Carolina, and New Hampshire ratified the Constitution with statements indicating that powers not expressly delegated were reserved, thereby insuring the rights protected by way of their respective state bills of rights. New York ratified but referred a lengthy Declaration of Rights and amendments to a proposed second general convention, the assembling of which was superseded by passage of the Bill of Rights. Significantly, neither North Carolina nor Rhode Island would ratify the Constitution until after the Bill of Rights was passed by the First Congress. HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT 96-97, n.62.

In *Ex Parte Milligan*, 4 Wall. 2 (1866), Justice Davis noted the general view that the Constitution never would have been ratified but for the tacit understanding that it would be amended so as to embody the customary guarantees of personal liberty. *Id.* at 120. And so it was. Washington spoke of the necessity of amendments in his inaugural

address to both houses of Congress. WRITINGS OF GEORGE WASHINGTON, VOL. XI 385-386. James Madison raised the subject of amendments in the First Congress four days later. The significance he gave the issue is reflected in his correspondence to George Eve, written prior to Washington's inaugural address:

> It is my sincere opinion that the Constitution ought to be revised, and that the first Congress meeting under it ought to prepare and recommend to the states for ratification the most satisfactory provisions for all essential rights, particularly the rights of conscience in the fullest latitude, the freedom of the press, trials by jury, security against general warrants, etc.

WRITINGS OF JAMES MADISON, VOL. V, 320.

Thus, whether original meaning or original intent is considered, it is clear that the Fourth Amendment was fundamental to the colonists' security and peace of mind in its assurance that they would not be subjected to suspicionless searches and seizures. It was essential to the government charter and considered axiomatic that suspicionless searches and seizures exceeded the scope of the "consent of the governed." THE DECLARATION OF INDEPENDENCE 8. This was not a radical concept, but one that had a foundation in centuries of scholarly reasoning.

The genesis of the concept of natural rights has been traced to the writings of Thomas Aquinas in the Thirteenth Century and was elaborated upon by Eighteenth Century philosophers. THE DECLARATION OF INDEPENDENCE 37-40. *See also* PAULINE MAIER, AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE 165-167 (1997). Sir William Blackstone's Commentaries on the Laws of England devoted significant discussion to natural or "absolute rights." He contended, without dispute, that the principal aim of society is to protect individuals in the enjoyment of their absolute rights vested in them by the

immutable laws of nature, and hence, that the "first and primary end of human laws is to maintain and regulate these *absolute* rights of individuals." COMMENTARIES ON THE LAWS OF ENGLAND, VOL. I, 120 (1765) (Emphasis in original). Included among the panoply of man's absolute rights protected by the laws of England was the personal security of individuals, *viz.* "the power of loco-motion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct; *without imprisonment or restraint*; unless by due course of law." *Id.* at 130 (emphasis added). These concepts of liberty resided deep within Thomas Jefferson who echoed Blackstone: "[T]here is a circle around every individual human being, which no government is allowed to overstep, that there is, or ought to be, some space in human existence thus entrenched around and sacred from authoritarian intrusion. . . . "[5] Blackstone further maintained that the right of personal security was a natural right that was not abridged without sufficient cause, not even by a magistrate absent the explicit cession of the law. Blackstone illustrated this principle by citing statutes providing that no freeman could be *detained* or imprisoned without cause shown. *Id.* at 131. So jealously guarded was the right to personal security, that imprisonment was defined to include "*arresting or forcibly detaining [a man] in the street*." *Id.* at 132. Blackstone's treatise reflects the great monument of English freedom that a general warrant to apprehend "all persons guilty of a crime therein specified," without naming or describing any particular person, is illegal and void for its uncertainty, "for it is the duty of the magistrate, and ought not be left to the officer, to judge of

[5] Roark, *State v. Jackson: Warning – Roadblock Ahead! Louisiana Creates Log Jam of Search And Seizure Analysis*, 46 LOY.L.REV. 1341, 1358 (2000).

the ground of suspicion." COMMENTARIES ON THE LAWS OF ENGLAND, VOL. IV 288-289.

Thus the concept of liberty has been consistently woven through the ages, originating in the Thirteenth Century with the principle accepted as fundamentally true by the great philosophers and scholars, that man, by his uniquely divine combination of blood coursing through his veins with the will of his heart and mind, should be ever free to move about society. This is why the Declaration of Independence stated as axiomatic that "*these truths are self-evident, that all men . . . are endowed by their creator with certain unalienable rights.*" THE DECLARATION OF INDEPENDENCE 8. The wholesale abridgement of the right of personal liberty entailed by law enforcement roadblocks, however, is inimical not only to the social compact between the American government and its citizens, but to the English common law and centuries upon centuries of reason giving rise to the formation of the United States of America.

Mass suspicionless criminal investigatory seizures of innocent citizens at transient law enforcement roadblocks resuscitates the despised general warrant. If we could "go back" and bring James Otis Jr. into the "future" he would stand before this Court and denounce seizures of innocent citizens without cause as he did in 1761. Jefferson, Adams, and Madison would look at the roadblocks in this case and *Sitz* and remind us that this is not the liberty *they* fought for.

II. *MICHIGAN v. SITZ* MISAPPLIED THE *BROWN v. TEXAS* BALANCING TEST IN DETERMINING THE CONSTITUTIONALITY OF TRANSIENT LAW ENFORCEMENT ROADBLOCKS.

Sitz upheld a Michigan drunk driving roadblock program based on the authority of *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), applying the balancing

test discussed in *Brown*, 443 U.S. at 50-51. *Sitz* is wholly unique in Fourth Amendment jurisprudence because it created an exception to the reasonable suspicion requirement attached to criminal investigatory seizures by allowing law enforcement to conduct mass *suspicionless* criminal investigatory seizures of citizens at interior roadblocks.

The Fourth Amendment standard of reasonableness applies to criminal investigatory seizures. *Davis v. Mississippi*, 394 U.S. 721 (1969).[6] The principle of judging the constitutionality of criminal investigatory seizures by balancing the public interest against the violation of individual liberty originated with *Terry v. Ohio*, 392 U.S. 1, 20-21 (1968).[7] There, the Court carved an exception to the probable cause requirement for seizures, establishing "a narrowly drawn authority" allowing the "stop and frisk" of an apparently armed and dangerous suspect upon reasonable suspicion where the exigencies of officer safety and prevention of impending crime counterbalanced the limited intrusion on the suspect's liberty. *Id.* at 26-27.

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[6] Recognizing the imperative that the Fourth Amendment apply to investigatory seizures, the Court stated:

> Investigatory seizures would subject unlimited numbers of innocent persons to the harassment and ignominy incident to involuntary detention. *Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions be termed 'arrests' or 'investigatory detentions.'*

Davis, 394 U.S. at 726-727 (Emphasis added).

[7] *Camara v. Municipal Court*, 387 U.S. 523 (1967), marked the Court's first consideration of balancing in the context of regulatory safety inspections, and was cited by the Court in *Terry*.

In *Sitz*, the Court applied the synthesized jurisprudence resulting from *Terry*'s exception to the predicate of probable cause, discussed in *Brown*, 443 U.S. at 50-51, to consideration of whether the suspicionless criminal investigatory seizures entailed by law enforcement roadblocks were constitutionally permissible. 496 U.S. at 450. However, the Court erred in its application of the balancing test at the inception by not placing the appropriate burden on the government to demonstrate the need for the incredible exception it created. *Camara*, 387 U.S. at 533 (noting that the government's interest in ensuring public safety was not, in and of itself, sufficient to justify exception).

Prior to *Sitz*'s remarkable exception to individualized suspicion for mass criminal investigatory seizures, the Court consistently rejected arguments that a seizure for ordinary criminal law enforcement could be justified on less than individualized suspicion. *Brown*, 443 U.S. at 52 (holding that officer could not detain suspicious looking individual to require production of identification); *Prouse*, 440 U.S. at 648 (holding that officer could not detain individual to check driver's license and registration without cause); *Henry v. United States*, 361 U.S. 98, 103-104 (1959) (invalidating search because seizure of suspects was not reasonable). Despite the significance of the needs in *Terry* – protection of officers' lives and the community from armed robbery – the Court did not elevate the needs above the constitutional requirement for individualized suspicion. *Cf. Ferguson v. City of Charleston*, 532 U.S. 67 (2001); *Chandler v. Miller*, 520 U.S. 305 (1997). It is an unwarranted anomaly that the government must demonstrate necessity for the criminal investigative seizure of an individual by articulating reasonable suspicion, but not for mass suspicionless criminal investigatory seizures.

The Court's abolition of the individualized suspicion requirement was marked by its departure from *Camara*'s

precept that public safety cannot justify creation of an exception unless the government can demonstrate that its legitimate ends cannot be met absent the exception. 387 U.S. at 533. However, when the appropriate burden of justification was placed on the states, it is clear that the exception created by *Sitz* is unnecessary to the government's interest.[8] Unlike *Martinez-Fuerte*'s undocumented aliens, drunk driving is outwardly manifested and readily observable[9] to both trained police officers and lay people. *Brignoni-Ponce*, 442 U.S. at 883 (noting that requirement of reasonable suspicion struck the balance between the government's interest and the public's interest in being free from suspicionless seizures since, "the characteristics of smuggling operations tend to generate articulable grounds for identifying violators"); *Camara*, 387 U.S. at 537 ("[T]he public interest demands that all dangerous conditions be prevented or abated, yet it is doubtful that any other canvassing technique would achieve acceptable results. Many such conditions . . . are not observable from outside the building and indeed may not be apparent to the inexpert occupant himself."); *Prouse*, 440 U.S. at 659

[8] *Martinez-Fuerte* cannot provide the basis for the *Sitz* exception because of the "qualitatively different balance of reasonableness" inherent in an immigration checkpoint. *United States v. Montoya De Hernandez*, 473 U.S. 531, 538 (1985). Notably, the Court dismissed Justice Brennan's "unwarranted" concern that the checkpoint permitted would be expanded because its holding was "confined to permanent checkpoints." *Martinez-Fuerte*, 428 U.S. at 566, n.19. Moreover, the result in *Martinez-Fuerte* was dictated in part by the presumption of constitutionality accorded relevant federal enactments and the federal government's constitutional authority to regulate immigration and protect our borders.

[9] *See* DWI DETECTION AND STANDARDIZED FIELD SOBRIETY TESTING, NHTSA STUDENT MANUAL, 2000 Session V, Vehicle In Motion, HS178 R2/00 (correlating traffic infractions with likelihood that a driver is impaired).

("Given the alternative mechanisms available . . . we are unconvinced that the incremental contribution to highway safety of the random spot check justifies the practice under the Fourth Amendment.").

> It is not enough to argue, as does the Government, that the problem of deterring unlawful entry by aliens across long expanses of the national boundaries is a serious one. The needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards.

United States v. Almeida-Sanchez, 413 U.S. 266, 273 (1973); *cf. Martinez-Fuerte*, 428 U.S. at 557 (A requirement that stops on major routes inland always be based on reasonable suspicion could be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a given car that would enable it to be identified as a possible carrier of aliens.").

The state cannot demonstrate any deficiencies in its ability to stop and detain drivers it reasonably suspects of drunk driving, nor can it demonstrate that roadblocks are necessary to removing drunk drivers from the public roads. The only justification is the amorphous interest in highway safety; there was not, nor could there be, any showing of necessity. In *Florida v. Royer*, 460 U.S. 491, 500 (1983), the Court affirmed *Brignoni-Ponce*'s holding that an officer may stop a driver reasonably suspected of criminal activity on less than probable cause. In *Whren v. United States*, 517 U.S. 806 (1996), the Court held that an officer may constitutionally stop and detain any driver for violating one of hundreds of traffic infractions and further, that the courts need not engage in the balancing of competing interests inherent in such potentially pretext stops. Law enforcement's existing arsenal, coupled with the

outward and observable manifestation of drunk driving, is sufficient to combat the crime of drunk driving – draconian dragnet techniques are not needed to catch drunk drivers.

In *Sitz*, the State did not seek an exception to the requirement of particularized suspicion because it was unable to detect and apprehend drunk drivers, rather, the State sought a "pass" on the requirements of *Terry* and the Fourth Amendment. Thus, the difficult question becomes, can a laudable purpose override the explicit text of the Fourth Amendment, written with the blood of those who believed "that all men . . . are endowed by their creator with certain unalienable rights; that among these are life, liberty, & the pursuit of happiness; [and] that *to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed. . . .* "? THE DECLARATION OF INDEPENDENCE 8 (emphasis added). The answer to this question lies in the balancing of competing interests articulated in *Brown v. Texas*. These factors, as applied to law enforcement roadblocks, will be addressed *seriatim*.

A. The Gravity of the Government Interest.

While the government's interest in the detection and apprehension of drunk drivers is undisputed, the interest in public safety cannot justify violation of citizens' Fourth Amendment right to be free from suspicionless seizures no more than the government's interest in curbing the staggering numbers of deaths caused by guns may justify infringing citizens' Second Amendment right to own a gun. *See Camara*, 387 U.S. at 533; *Edmond*, 531 U.S. at 42 ("But the gravity of the threat alone cannot be dispositive of questions concerning what *means* law enforcement officers may employ to pursue a given purpose. [Emphasis added.]"). *Cf. Richards v. Wisconsin*, 520 U.S. 385, 392-394 (1997) (rejecting argument that government interest for

officer safety and preservation of evidence justified exception to knock and announce requirement for felony drug cases); *Florida v. J.L.*, 529 U.S. 266, 272-273 (2000) (rejecting argument that inherently dangerous nature of firearms justified firearm exception to *Terry*'s particularized suspicion requirement). Allowing any significant government interest to justify suspicionless criminal investigatory seizures clearly departs from the "original meaning" of Fourth Amendment "reasonableness," since it would mark a return to the nameless general warrant, which found its justification in the severity of the crime. *Entick v. Carrington*, 19 How. St. Tr. 1029, 1063-1064 (K.B. 1765).

Analyzing the constitutionality of mass suspicionless criminal investigatory seizures by simply juxtaposing the government interest against the individual intrusion, as the Court did in *Sitz*, would result in the Fourth Amendment's proscription of unreasonable seizures being swallowed by exceptions, since the government's interest in apprehension of criminals is always significant, while a *Terry* type investigative seizure is, *by definition*, minimally intrusive. Accordingly, the second prong of the balancing test – the degree to which the seizure advances the government's interest – is pivotal to a meaningful analysis.

B. The Degree to which the Seizure Advances the Government Interest.

The degree to which suspicionless seizures advance the public interest is gauged by the effectiveness of the method at issue and the absence of other alternatives. *Prouse*, 440 U.S. at 661 (noting that "the marginal contribution to roadway safety" did not justify suspicionless seizures); *Brignoni-Ponce*, 422 U.S. at 881 (allowing stops based on reasonable suspicion, the Court considered "the

absence of practical alternatives for policing the border."); *Camara*, 387 U.S. at 537.

The justification for roadblocks in *Sitz* was the "obvious connection between ... highway safety and [roadblocks]." *Edmond*, 531 U.S. at 39. Notably, *Sitz* cited the death toll caused by drunk drivers in assessing the public interest. 496 U.S. at 451. However, thirteen years after *Sitz*, the benefit of hindsight reveals the absence of any nexus between roadblocks and highway safety. The nine States with the highest alcohol related deaths average 1.01 deaths per 100 million vehicle miles, while the nine States with the lowest alcohol related deaths an average .41 deaths per 100 million vehicle miles.[10] If there was a nexus between highway safety and roadblocks, the states with the lowest rates of alcohol related deaths would be those that allowed roadblocks, while the states with the highest death rates would not; however, in both instances, eight of the nine states in the two categories allow roadblocks.

Statistics from the National Highway Traffic Safety Administration for the period of 1992-2001 disclose that 60% of the states that do not employ roadblocks[11] experienced a *reduction* in alcohol related traffic fatalities in 2001 when compared with 1992. A similar comparison to

[10] Alcohol Involvement in Fatal Crashes 2001, National Highway Safety Administration, DOT HS 809 579; Table A-24 (April 2001). *States with the lowest alcohol related deaths*: Utah .29, Vermont .36, New York .38, Minnesota .42 (no roadblocks), New Jersey .43, Massachusetts .44, Maine .45, Virginia .46, and Indiana .47. *States with the highest alcohol related deaths:* Alaska .91, New Mexico .92, Wyoming .94 (no roadblocks), Arizona .96, South Dakota .98, Washington D.C. 1.01, Montana 1.04, Louisiana 1.08, South Carolina 1.27.

[11] Idaho, Iowa, Michigan, Minnesota, Oregon, Rhode Island, Texas, Washington, Wisconsin, and Wyoming.

states using roadblocks demonstrates that 62.5% experienced an *increase* in alcohol related fatalities in 2001 when compared to 1992.[12] Clearly, there is no nexus between roadblocks and highway safety.

Empirical data supports the premise that there are effective suspicion based methods of combating drunk driving. For example, Pennsylvania's local police agencies seized 112,617 citizens at roadblocks to make 730 drunk driving arrests in 2002 (arrest rate of 0.6%). During the same year, roving drunk driving patrols made 687 drunk driving arrests as a result of 9,838 stopped vehicles, yielding an arrest rate of 6.98%, over ten times greater than that for roadblocks.[13] Similarly, in 2002, Checkpoint Strikeforce, a regional program in Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia, roadblocks yielded an arrest rate of 0.46%, while saturation patrols produced an arrest rate of 10.7%, over ten times greater than that for roadblocks.[14]

Considered together, the foregoing data not only reveals that there is not a nexus between highway safety and roadblocks, but also that roadblocks are the least effective method of addressing the interest in highway safety. *Sitz*, however, considered neither the ineffectiveness of the newly minted law enforcement method of roadblocks, nor "the absence of practical alternatives."

[12] Statistics reported by the NHTSA, available at <http://www.nhtsa.dot.gov/people/injury/alcohol/july4planner-03/July4crash_statistic.html> (accessed August 6, 2003).

[13] Statistics compiled by the Pennsylvania DUI Association, available at <http://www.padui.org/1999data.htm> (accessed August 6, 2003).

[14] Statistics reported by the National Highway and Traffic Safety Association (NHTSA), available at <http://www.nhtsa.dot.gov/nhtsa/whatis/regions/region03/webreport.cfm> (accessed August 6, 2003).

Brignoni-Ponce, 422 U.S. at 881. Rather, the Court discounted the Michigan Court of Appeals' analysis of *Brown*'s effectiveness prong, giving unparalleled deference to law enforcement stating that, "this passage from *Brown* was not meant to transfer from politically accountable officials to the courts the decision as to which among reasonable law enforcement techniques should be employed . . . for purposes of Fourth Amendment analysis, the choice among such reasonable alternatives remains with [law enforcement]." 496 U.S. at 453-454.

The Court's deference to law enforcement was unjustified. The decision to employ roadblocks is not an "on the spot" decision made by an officer in the heat of the moment (the cases in which the Court has given due deference to law enforcement), but a considered decision by a local police agency to conduct mass suspicionless criminal investigatory seizures. No executive or legislative domestic law enforcement method is immune from judicial review when the choice is challenged as constitutionality flawed. While law enforcement may choose which constitutional methods to employ, the power to choose from alternatives does not render each alternative constitutionally reasonable. *Cf. Kylo v. United States*, 533 U.S. 27 (2001) (invalidating infrared surveillance of homes without deference to law enforcement's decision that it was an effective crime-fighting tool). The very purpose of balancing is to assess the constitutionality of the *method* employed, yet that analysis ceases to be meaningful when the Court abdicates an element of balancing to the unrestrained judgment of law enforcement. The dangers inherent in relegating judicial review to law enforcement were recognized at common law by Lord Chief Justice Pratt, to wit:

> [T]hough their intentions were very pure . . . it often happens that to this ignorance of the law they add a contempt for it, and a disposition to disregard its restraints, and overleap the limits

> it prescribes to their authority, which they are apt to consider as narrow pedantic rules which it is below their dignity to submit to. . . . They are therefore fond of the doctrines of 'reason of state, and state necessity, and the impossibility of providing for great emergencies and extraordinary cases, without a discretionary power in the crown to proceed sometimes by uncommon methods not agreeable to the known forms of law,' and the like dangerous and detestable positions, which have ever been the pretence and foundation for arbitrary power.

Wilkes v. Wood, 19 How. St. Tr. 1153, 1169 (1763).

C. The Degree of Interference with Individual Liberty.

The degree to which investigatory seizures interfere with individual liberty is measured both objectively and subjectively. *Camara*, 387 U.S. at 530-533; *Prouse*, 440 U.S. at 657. This prong of the *Brown* balancing test, as applied by *Sitz*, does not encompass the broad range of considerations unique to mass suspicionless criminal investigatory seizures of the innocent motoring public.

1. The Objective Intrusion Is Constitutionally Significant.

The objective intrusion on individual liberty entailed by a seizure is measured by the duration of the seizure and the intensity of the investigation. *Sitz*, 496 U.S. at 452. *Camara* established that there is an appreciable difference in the objective intrusion of a criminal search, as compared to an administrative or regulatory search, a distinction equally applicable to seizures. The Court noted the heightened "hostility" of the intrusion implicated by "the typical policeman's search for the fruits and

instrumentalities of crime." 387 U.S. at 530. Ultimately, one of the three factors it cited to support its conclusion that area search warrants were a reasonable mode of enforcing state health and sanitation laws, was that the inspections were "neither personal in nature nor aimed at discovery of a crime." 387 U.S. at 537. *Accord National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 666-668 (1989). *Sitz*, however, did not consider the distinction, as evidenced by the Court's statement that, "[w]e see virtually no difference between the levels of intrusion on law-abiding motorists from the brief stops necessary [in *Sitz* and *Martinez-Fuerte*], which to the average motorist would seem identical save for the nature of the questions the checkpoint officers might ask." *Sitz*, 496 U.S. at 451-452.

Realistically, the intrusion inherent in sobriety roadblocks' criminal investigatory seizures is much greater than the intrusion of a border checkpoint where the overwhelming majority of vehicles are waved through. The intensity of the seizure is greater because of its criminal investigatory character, as opposed to the border checkpoint where "all that is required of the vehicle's occupants is a response to a brief question or two and possibly the production of a document evidencing a right to be in the United States [*e.g.*, a valid driver's license]." *Martinez-Fuerte*, 428 U.S. at 558. Conversely, drivers seized at drunk driving roadblocks are not only required to submit to a brief interrogation regarding their conduct and whereabouts for the evening (in addition to being required to produce a driver's license and registration), but are also questioned at an intimate range, which allows the officer to smell the driver's breath, inspect the driver's clothing, examine the driver's complexion, and shine a flashlight in the driver's face to examine the driver's eyes. *See generally Respondent's Brief* in *Sitz*, 1989 WL 429002, *33. Thus, while an immigration checkpoint stop is neither personal

in nature nor designed to discover evidence of a crime (like the regulatory searches in *Camara*), criminal investigatory drunk driving roadblock seizures have an intensely personal focus.

The objective intrusion is also measured by the duration of the seizure. In gauging this intrusion, *Sitz* considered the duration of an individual seizure, said to last twenty-five seconds. 496 U.S. at 448. While it is true that the initial citizen contact at a roadblock may be brief, the overall detention is often significantly prolonged while innocent citizens wait to be interrogated. Data on overall delays in checkpoint cases is conspicuously absent, though there is some anecdotal evidence. For example, on Memorial Day, 2003, in Jackson County, Missouri, a roadblock "stopped 2,286 cars and created a delay of 40 minutes to an hour. At one point, traffic was backed up two miles." The roadblock resulted in seven drunk driving arrests and significant public outcry.[15]

Sitz's analysis of the objective intrusion was flawed because it pitted the dramatic interest of "mutilation on the Nation's roads" against the intrusion suffered by a singular individual, rather than considering the societal intrusion. In *Maryland v. Wilson*, 519 U.S. 408, 415 (1997), Justices Stevens and Kennedy dissented from the holding that an officer may order passengers out of a vehicle stopped for a traffic infraction, troubled by the "separate and significant question concerning the power of the State to make an initial seizure of persons who are not even suspected of having violated the law." In balancing the interest of officer safety against the individual intrusion,

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[15] Examiner.net, "*Legislature Got An Earful About Sobriety Checkpoint*," <http://www.examiner.net/stories/062403/gov_062403009.shtml> (accessed August 6, 2003).

the dissent recognized that, "the aggregation of thousands upon thousands of petty indignities has an impact on freedom that I would characterize as substantial, and which in my view clearly outweighs the evanescent safety concerns pressed by the majority." *Id.* at 419. *See also City of Seattle v. Mesiani*, 755 P.2d at 778 ("The easiest and most common fallacy in "balancing" is to place on one side the entire, cumulated "interest" represented by the state's policy and compare it with one individual's interest in freedom from the specific intrusion on the other side. A fairer balance would weigh the actual expected alleviation of the social ill against the cumulated interest invaded.").

Innocent citizens have the "right to free passage without interruption" on the public highways. *United States v. Carroll*, 267 U.S. 132, 154 (1925); *see also Dunaway v. New York*, 442 U.S. 200, 213 (1979) ("Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment[.]"). This is a fundamental right deeply engrained in the rubric of American life. Multi-tasking Americans today, more than ever, value their liberty, their "power of loco-motion."[16] This right and the privacy it affords is so highly valued that the overwhelming majority of Americans would rather get up earlier in the morning and return home later at night than take public transportation or participate in a car pool. Yet, the motoring public's right of free passage was not considered as part of its interest in *Sitz*, despite 125 innocent individuals' course of travel being delayed, nor was the intrusion of being subjected to interrogation considered by the Court. *See, e.g., Brignoni-Ponce*, 422 U.S. at 883 ("We are not convinced that the legitimate

[16] COMMENTARIES ON THE LAWS OF ENGLAND, VOL. I, 130.

needs of law enforcement require this degree of interference with lawful traffic.").

The practical effect of *Sitz* is the erosion of society's exercise of its right of free passage and its reasonable expectation of privacy in exercising that right, as evidenced by the proliferation of law enforcement roadblocks.[17] This intrusion cannot honestly be characterized as "slight." *Sitz*, 496 U.S. at 451.

2. The Subjective Intrusion Is Constitutionally Significant.

The subjective intrusion on liberty entailed by a seizure is measured by the degree of officer discretion and the fear and surprise the roadblock may generate. *Sitz*, 496 U.S. at 452-453; *Martinez-Fuerte*, 428 U.S. at 558. Officer discretion is limited in the context of permanent immigration checkpoints and in the type of administrative "license and registration" roadblocks alluded to in *Prouse* because of the concrete laws being enforced, that is, a driver is validly licensed or not; an individual has a right to be in the United States or not. *Martinez-Fuerte*, 428 U.S. at 562. However, transient law enforcement roadblocks do not have the same inherent limitations upon officer discretion.

[17] While it is true that an individual's expectation of privacy in a car is not equivalent to one's expectation of privacy in a home, that principle applies to searches based upon reasonable suspicion, which are justified by the mobile nature of the vehicle, not to suspicionless seizures. *E.g., Cady v. Dombrowski*, 413 U.S. 433, 441-442 (1973); *cf. Prouse*, 440 U.S. 662 (noting individuals' expectation of privacy in an automobile, stating "[w]*ere the individual subject to unfettered governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed. . . .* ").

It is not illegal to drink and then drive in any state in our country. Accordingly, the officer conducting the initial criminal investigatory seizure of drivers passing through a roadblock *must* exercise a significant degree of discretion. As the record in *Sitz* revealed, officers conducting the initial seizures send drivers to a secondary investigation area based on factors ranging from the smell of alcohol on the driver's breath to the driver's shirt not being properly buttoned.

In *United States v. Ortiz*, 422 U.S. 891, 895 (1975), the Court determined that the low percentage of vehicles singled out for search by border patrol authorities (fewer than 3%) evidenced the "substantial degree of discretion" exercised by the officer determining which cars would be searched. This same level of discretion is exercised in roving roadblocks where, as in *Sitz*, a small percentage of drivers are referred to a secondary area for further interrogation and field sobriety tests. *Sitz*, 496 U.S. at 448 (1.6% of drivers referred to secondary).

Finally, in measuring discretion, the Court considers the potential for abuse. Unlike the permanent checkpoints in *Martinez-Fuerte*, decisions concerning the location of roving roadblocks are not made by distant high-ranking officials, but by officers within local police agencies, who then conduct the transient roadblocks in the neighborhoods they patrol. There is substantial potential for abuse exercised by the "officer in the field" conducting criminal investigatory seizures of the citizens he may know from his daily patrols. He may lawfully order the driver out of the vehicle and proceed to frisk the driver. *Pennsylvania v. Mimms*, 434 U.S. 106, 111-112 (1977). Additionally, he can order the passengers to step out of the vehicle. *Maryland v. Wilson*, 519 U.S. 408 (1997). Drivers referred to the secondary investigation area will feel the stigmatization of

being labeled a drunk driver, rightly or not, as they perform field sobriety tests along the side of the road as their neighbors watch from their cars.

Sitz erred in its analysis of the "fear and surprise" generated by transient law enforcement roadblocks in two respects. First, while noting that this inquiry considers the fear and surprise of the law abiding motorist as opposed to the concern about the prospect of being stopped felt by the driver who has been drinking, the Court failed to consider that transient roadblocks generate fear and surprise in the heart of every innocent driver who had a glass of wine with dinner, not because the driver is impaired, not for fear of being "caught," but for fear that of being subjected to an unwarranted criminal investigation for driving under the influence.

Second, *Sitz* rests on the premise that where the Fourth Amendment violation is en masse, the intrusion is minimal since "the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened and annoyed by the intrusion." 496 U.S. at 453. This philosophy is fundamentally flawed and overemphasizes the Fourth Amendment's protection from *discriminatory* seizures while minimizing its assurance against *unjustified* intrusions. The Fourth Amendment guards the "right of the *people* to be secure in their persons," as opposed to the right of a singular individual. It is anomalous to posit that its protections protect the lone citizen, but not society. Colonists took no comfort in knowing that writs of assistance justified the search of *everyone's* home and business. The resentment engendered by general warrants was not assuaged by their character of being warrants against a nation. To the contrary, it was precisely the regularity attendant to writs of assistance and general warrants, executed with the calculated sanction of law, which led colonists to demand that a bill of rights be enacted to

assure the citizenry that such investigatory practices would *not* be sanctioned by the government, that their natural right of liberty would not be abridged. As recognized by Justice Kennedy, "Liberty comes not from officials by grace, but from the Constitution by right." *Maryland v. Wilson*, 519 U.S. at 424.

- CONCLUSION

Michigan v. Sitz should be overruled and the judgment of the Illinois Supreme Court should be affirmed.

Respectfully submitted,

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August 7, 2003